

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

June 1, 1999

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*

Docket No. 97-00309

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INITIAL ORDER ACCEPTING BELL SOUTH TELECOMMUNICATIONS, INC.'S  
NOTICE OF VOLUNTARY DISMISSAL AND WITHDRAWAL

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On March 10, 1999, the Tennessee Regulatory Authority ("TRA" or "Authority") issued a Final Conference Agenda for its regularly scheduled March 16, 1999, Authority Conference. This matter, TRA Docket No. 97-00309, was listed as Agenda Item No. 1 and was scheduled to be deliberated by the Directors of the Authority on March 16, 1999. Also on March 10, 1999, BellSouth Telecommunications, Inc. ("BellSouth") filed a *Motion to Remove Item No. 1 From March 16, 1999, Final Conference Agenda*.<sup>1</sup> On March 16, 1999, the Authority denied BellSouth's motion and appointed Chairman Melvin Malone to render a decision on the merits or to take such other action as deemed appropriate.<sup>2</sup> On April 8, 1999, BellSouth filed a *Notice of Voluntary Dismissal without Prejudice and Withdrawal of Advance Notice of Section 271 Filing*

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<sup>1</sup> In its *Motion to Remove Item No. 1 from March 16, 1999, Final Conference Agenda*, BellSouth sought to delay a decision on the merits in this matter until at least four (4) items were resolved. Namely, BellSouth requested the Authority to defer a decision on the merits until: (1) a final order issued in *Petition to Convene a Contested Case Proceeding to Establish Permanent Prices for Interconnection and Unbundled Network Elements*, TRA Docket No. 97-01262; (2) the issues surrounding the supplementation of the evidentiary record were resolved; (3) the intervenors have the opportunity to consider, submit, and/or respond to the deposition of Mr. William Denk in connection with BellSouth's Tennessee PCS study; and (4) such time as the parties reduce to writing a November 19, 1998, agreement to remove certain issues from contention.

<sup>2</sup> A copy of the *Order Denying BellSouth's Motion to Defer* is attached hereto as **Exhibit A**.

(*"Notice of Voluntary Dismissal and Withdrawal"*). Interested parties filed responses to the *Notice of Voluntary Dismissal and Withdrawal* on April 14, 1999. This matter is before the Hearing Officer on *BellSouth's Notice of Voluntary Dismissal and Withdrawal*. After careful consideration, the *Notice of Voluntary Dismissal and Withdrawal* is accepted.

## I. TRAVEL OF THE CASE

Prior to the passage of the federal Telecommunications Act of 1996 (the "Act") in February of 1996, Bell Operating Companies ("BOCs"), such as BellSouth, were prohibited from entry into the in-region long distance (interLATA) market. Under this prohibition, BellSouth could not provide long distance services in Tennessee. Section 271 of the Act, however, provides that BOCs may gain entry into the in-region long distance market by meeting the criteria set forth therein and obtaining the approval of the Federal Communications Commission ("FCC"). Before making any determinations under Section 271 of the Act, the FCC must consult with the State commission of the State that is the subject of the application. 47 U.S.C. § 271(d)(2)(B).

Cognizant of their consultative role under Section 271 of the Act<sup>3</sup>, and in an effort to hasten the development of competition in the telecommunications market in Tennessee, on March 4, 1997, at a regularly scheduled Conference, the Directors of the Authority instituted a Formal Inquiry for the purpose of determining the compliance of BellSouth with the criteria and

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<sup>3</sup> "In order to fulfill this role as effectively as possible, state commissions must conduct proceedings to develop a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local competition **in advance** of the filing of section 271 applications. . . . The state commission's development of such a record **in advance** of a BOC's application is all the more important in light of the strict, 90-day deadline for Commission review of section 271 applications (emphasis added)." *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, FCC, CC Docket No. 97-137, para. 30 (August 19, 1997)* (hereinafter the "Ameritech Order").

procedures set forth in the Act for entry into the in-region long distance (interLATA) markets in Tennessee.<sup>4</sup>

Under the Act, the decision of when to apply for Section 271 approval with the FCC is in the sole discretion of the BOCs. In April of 1997, BellSouth voluntarily agreed to provide the TRA at least ninety (90) days' advance notice before filing its Section 271 application with the FCC. On December 12, 1997, BellSouth filed its Notice of Filing, together with supporting documentation and testimony, with the TRA. BellSouth filed its Statement of Generally Available Terms and Conditions ("SGAT") with the TRA on January 16, 1998. After many pre-hearing and status conferences, several technical workshops, a discovery period, and the submittance of pre-filed testimony, an extensive hearing on the merits was held on May 5-7, May 11-15, and May 27-28, 1998. Approximately twenty-six (26) witnesses submitted testimony at the hearing.<sup>5</sup> Subsequent to the hearing, the parties submitted post-hearing briefs and proposed findings of fact and conclusions of law.<sup>6</sup>

On July 22, 1998, BellSouth submitted *BellSouth's Supplemental Notice of Filing* (the "*Supplemental Filing*"). In August of 1998, both AT&T Communications of the South Central States, Inc. ("AT&T") and NEXTLINK Tennessee, L.L.C. ("NextLink") objected to the *Supplemental Filing*, and BellSouth responded to said objections on November 17, 1998. On December 15, 1998, the parties reached a verbal agreement permitting the *Supplemental Filing*,

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<sup>4</sup> The Order Instituting Formal Inquiry and Adopting Procedure was entered on March 21, 1997. It should be noted here that on December 17, 1996, the Directors of the TRA requested the TRA Staff to conduct an informal investigation into BellSouth's entry into the long distance market in Tennessee. Comments received from the Consumer Advocate Division, BellSouth, and certificated facilities-based providers of local telephone service in Tennessee were included in the TRA Staff's Informal Investigation and Report, which was submitted to the Directors on February 18, 1997, and constitutes a part of the record in this matter.

<sup>5</sup> Excluding BellSouth, sixteen (16) parties participated in this proceeding, including the Consumer Advocate Division.

subject to the intervenors being provided the opportunity to rebut the same, to become a part of the evidentiary record. The parties were directed by the Authority to reduce this agreement to writing. To date, no such agreement has been submitted.

On November 19, 1998, a status conference was held in this case to ascertain the status of the following: (1) late filed exhibits to the hearing; (2) BellSouth's Tennessee Personal Communications Services ("PCS") Study; and (3) the positions of the parties with respect to the FCC's recent findings in *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, FCC, CC Docket No. 98-121 (October 13, 1998), that BellSouth has met, among others, checklist items 3 (access to poles, ducts, conduits, and rights-of-way) , 7(I) (911 and E911 services), 8 (white pages directory listings), 9 (numbering administration), and 10 (databases and associated signaling).<sup>7</sup> After much discussion concerning the record before the Authority in this matter and the FCC's decisions on BellSouth's Second Louisiana Section 271 Application, the parties present at the status conference agreed to resolve checklist items 3, 7(I), and 9, in whole or in part, consistent with and as evidenced by their comments made at the status conference. The parties were directed to memorialize the agreements in writing and submit them to the Authority. To date, no agreement concerning checklist items 3, 7(I), and 9 have been submitted.<sup>8</sup>

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<sup>6</sup> "We will consider carefully state determinations of fact that are supported by a **detailed and extensive record**, and believe the development of such a record to be of great importance to our review of section 271 applications (emphasis added)." *Ameritech Order*, para. 30.

<sup>7</sup> For a more in depth discussion of the reasons for and the settlements reached at the status conference, see **Exhibit D** attached hereto.

<sup>8</sup> Further, the Hearing Officer requested the parties to continue to dialogue concerning checklist items 8 and 10. The parties were directed to meet on December 14, 1998, to discuss, in good faith, the remaining disagreements and contentions concerning these checklist items with an aim toward resolving them, in whole, or in part if applicable, by agreement. Finally, the parties were directed to notify the Authority in writing of the status of checklist items 8 and

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## II. POSITIONS OF THE PARTIES ON THE NOTICE OF VOLUNTARY DISMISSAL AND WITHDRAWAL

### a. BellSouth

In its *Notice of Voluntary Dismissal and Withdrawal*, BellSouth seeks to voluntarily dismiss its SGAT without prejudice. Further, BellSouth seeks to withdraw its December 12, 1997, advance notice of its intention to file an application for authority to provide interLATA service in Tennessee with the FCC.

In support of its *Notice of Voluntary Dismissal and Withdrawal*, BellSouth states:

[T]he filings made in January 1998, as supplemented by additional filings in July 1998, do not now fully comply with the directions previously provided by the Authority in connection with these matters. Specifically, in its earlier orders the Authority required BellSouth to file with the Authority a copy of its proposed Section 271 application to the FCC as well as all supporting documentation so that the TRA would have available to it the same or substantially the same

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10 no later than December 21, 1998. On December 21, 1998, BellSouth reported that the relevant parties had partially resolved checklist item 8 and had fully resolved checklist item 10.

<sup>9</sup> The Authority denied BellSouth's motion to defer by a vote of 2 to 1. Director Kyle did not join in the position of the majority.

information as the FCC. While BellSouth has endeavored to comply with that order, events have overtaken the process and BellSouth cannot represent that the filing which is presently before the Authority does in fact constitute the complete filing that would be made at the FCC if that filing were to be made today, or any time in the near future.

Moreover, although BellSouth has supplemented its filing previously, BellSouth cannot represent to the Authority that another supplemental filing will not be required to conform to the Authority's direction before a Tennessee filing is made at the FCC.

*Notice of Voluntary Dismissal and Withdrawal at 1-2.*

b. AT&T

AT&T vehemently opposes *BellSouth's Notice of Voluntary Dismissal and Withdrawal*.

Primarily, AT&T opposes the *Notice of Voluntary Dismissal and Withdrawal* because it would have the effect of: (1) ignoring the substantial record developed in this docket and depriving Tennessee consumers of the benefits of the substantial work accomplished to date; (2) lessening the likelihood that BellSouth will fulfill its obligations to open its local market to competition; (3) precluding the Authority from acting in the interest of consumers by, among other things, announcing its views on BellSouth's 271 compliance; (4) precluding the Authority from providing a 271 road map towards compliance; (5) hampering efforts to ensure the provision of nondiscriminatory access by BellSouth; and (6) removing BellSouth's incentive to cooperate in removing the remaining barriers to competition.

c. e.spire Communications, Inc. ("e.spire")

e.spire "recommends that the Tennessee Regulatory Authority issue an order dismissing BellSouth's application and clos[e] this docket." *Response of e.spire at 1.*

d. NextLink

NextLink does not oppose the request of BellSouth to withdraw the advance notice of its intention to file an application for authority to provide interLATA service in Tennessee with the FCC. Further, NextLink does not oppose BellSouth's voluntary dismissal of its SGAT, "so long as BellSouth represents that it shall not use such dismissal to disadvantage any competitive provider in Tennessee with regard to BellSouth's provision of interconnection and related services to those competitive providers." *Response of NextLink at 1*. NextLink commented that BellSouth knew that its 271 filing with the Authority was "premature" and "incomplete" at the time that it was filed and that "BellSouth's insistence on proceeding with this matter last year seems to have been based on something other than a good faith belief that BellSouth actually met the requirements of Section 271." *Id. at 2*.

III. DISCUSSION AND ANALYSIS

a. Section 271 of the Act

Section 271 (d)(1) of the Act provides that "On or after the date of enactment of the Telecommunications Act of 1996, a Bell operating company or its affiliate may apply to the [FCC] for authorization to provide interLATA services originating in any in-region State." Based upon the plain language of the Act, since the inception of this case, the Authority has consistently recognized that the decision of whether and/or when to apply for Section 271 approval with the FCC is in the sole discretion of BellSouth. *See, e.g., Report and Recommendation of Hearing Officer on January 22, 1998, Status Conference at 13* ("[T]he Act establishes that BellSouth is the master of its fate with respect to the time it chooses to file its

Section 271 application[.]”<sup>10</sup> The Act neither mandates that BellSouth apply for Section 271 approval nor that a Section 271 application be filed by a date certain. Consequently, this is BellSouth’s case to file or not, or pursue or not, sans any statutory obligation to do either. It is upon this foundation that the Authority must review *BellSouth’s Notice of Voluntary Dismissal and Withdrawal*.

Under the Act, a Section 271 application may not be approved unless the FCC finds the following: (1) that the petitioning BOC has met the requirements of subsection (c)(1) and has either fully implemented the competitive checklist in subsection (c)(2)(B) or offers a compliant SGAT; (2) that the requested authorization will be carried out in accordance with the requirements of section 272; and (3) that the requested authorization is consistent with the public interest, convenience, and necessity. 47 U.S.C. § 271(d)(3). Further, the FCC has opined that BOCs must demonstrate compliance with the provisions of Section 271 by a preponderance of the evidence before receiving approval. BOCs have been duly advised that partial compliance, no matter how well intended, is insufficient. In fact, BOCs have been advised not to prematurely file applications with the FCC before such time as they can demonstrate, in compliance with the Act, circumstances justifying 271 approval. As has been demonstrated by various Section 271 applications filed and subsequently denied by the FCC, meeting the aforementioned statutory requirements in order to gain Section 271 approval requires a reasonable commitment on the part of the BOCs.

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<sup>10</sup> This Report was approved and adopted by the Authority on February 3, 1998. A copy of this Report and Recommendation (hereinafter the “Second Report and Recommendation”) is attached hereto as **Exhibit B**. Exhibit



b. BellSouth's Reasons for Dismissal and Withdrawal

The foregoing requirements that BOCs must meet before Section 271 approval is granted existed when BellSouth filed its Section 271 advance notice with the TRA, and such requirements exist today. BellSouth's statements in its *Notice of Voluntary Dismissal and Withdrawal*, taken together with an awareness of Section 271 requirements, provide a presumable basis upon which BellSouth's election to withdraw its Section 271 filing with the Authority at this time can be understood. In its *Notice of Voluntary Dismissal and Withdrawal*, BellSouth reasoned that its action is compelled due to the procedural framework established in this proceeding by the Authority.<sup>11</sup> Before commenting further upon the specific reasons set forth in *BellSouth's Notice of Voluntary Dismissal and Withdrawal*, a brief outline of the procedural framework adopted by the Authority in this case is warranted.

The FCC has urged state commissions to be vigilant and active concerning their Section 271 roles. State commissions have been charged to develop comprehensive, detailed factual records in advance of a BOC submitting a Section 271 application to the FCC.<sup>12</sup> According to the FCC, in order to fulfill their consultative duties under the Act, state commissions should establish as their objective the review of 271 filings prior to the same being submitted to the FCC.<sup>13</sup> For such review to be meaningful, however, the filing reviewed must be as close in substance, as is practicable, as the filing that will be made before the FCC.

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B attached hereto does not have a copy of the First Report and Recommendation attached to it because the First Report and Recommendation, as set forth in footnote 10 below, is attached to this Initial Order as **Exhibit C**.

<sup>11</sup> The procedural framework approved and adopted by the Authority is set forth in the *Report and Recommendation of Hearing Officer on April 3, 1997, Status Conference* (hereinafter the "First Report and Recommendation"), which is attached hereto as **Exhibit C**. This Report was adopted by the Authority on April 29, 1997. For an explanation of the reasons for the adoption of said framework, see *supra* nn. 3 and 5.

<sup>12</sup> See *supra* nn. 3 and 5.

<sup>13</sup> Such a review is significant because, among other reasons, state commissions must provide consultation to the FCC on Section 271 applications within twenty (20) days after the issuance of the Initial Public Notice. See *Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act, FCC*

By letter dated April 1, 1997, BellSouth agreed to provide the Authority with at least ninety (90) days' advance notice before an application is filed with the FCC under Section 271 of the Act. The Authority required BellSouth, in connection with its 271 filing in Tennessee, to file "all evidence and information, of whatever nature, that it will rely upon before the FCC in support of the Section 271 application" contemporaneously with its advance notice. *First Report and Recommendation at 6-7*. Further, the Authority required BellSouth to file "a copy of the Section 271 application to be filed with the FCC" no later than thirty-five (35) days after the filing of its advance notice with the Authority. *Id.* at 7. Finally, BellSouth remained under a good faith obligation to provide the Authority with changes, revisions or additions to its Section 271 application. *Id.*<sup>14</sup>

In its *Notice of Voluntary Dismissal and Withdrawal*, BellSouth states that the cause of the filing is BellSouth's inability to "now fully comply" with the 271 procedural framework adopted by the Authority. Specifically, BellSouth is of the opinion that "events have overtaken the process and BellSouth cannot represent that the filing which is presently before the Authority does in fact constitute the complete filing that would be made at the FCC if that filing were to be made today, or anytime in the near future." *BellSouth's Notice of Voluntary Dismissal and Withdrawal at 1-2*. Further, BellSouth states that it "cannot represent to the Authority that another supplemental filing will not be required." *Id.* at 2. The Hearing Officer does not take issue with the sincerity of BellSouth's representations. Still, it is important that *BellSouth's*

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96-469, Section E (Dec. 6, 1996). As this matter now exceeds approximately 40,000 pages, meaningful state review would be seriously jeopardized if the Authority's review process was forestalled only to commence at the time of BellSouth's FCC filing.

<sup>14</sup> The continuing obligation requires good faith and fair and reasonable judgment on the part of BellSouth. It does not require BellSouth to submit a filing "every time a change is made" or to provide "a day to day" or "an hour to hour" update. *April 29, 1997, Authority Conference Transcript, pp. 44, 46.*

*Notice of Voluntary Dismissal and Withdrawal* is reviewed in full context of the record before the Authority.

With respect to BellSouth's comments concerning a "complete filing," the record in this matter reflects that BellSouth has advised the Authority on several occasions that its 271 filing is a "work in progress" and may continue to change up until such time as its Tennessee Section 271 application is filed with the FCC. *See, e.g., April 29, 1997, Authority Conference Transcript at 41* ("[I]t is very much a work in progress.") (comments of counsel for BellSouth). Nonetheless, in establishing a procedural framework in this matter, the Authority, in conjunction with the parties, painstakingly crafted a strategy to optimize the objective of ensuring that the Authority's advance review of BellSouth's Section 271 filing would be substantively and materially comparable to the Section 271 application filed with the FCC. Otherwise, an advance notice period, as well as hearings held prior to BellSouth's decision to modify its filing with supplements, would greatly infringe upon the objective we sought to attain in designing the procedural framework.<sup>15</sup> BellSouth's legally imposed burden to demonstrate compliance with the provisions of Section 271 by a preponderance of the evidence before receiving approval must by denotation acknowledge that an advance notice period, within the Section 271 context, is a representation that the company believes itself to be Section 271 compliant;<sup>16</sup> and, furthermore,

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<sup>15</sup> BellSouth participated in the development of and understood the framework and the intended purpose of the advance notice period, as evidenced in its initial notice of filing. *See BellSouth's Notice of Filing, p. 1, TRA Docket No. 97-00309, December 12, 1997* ("Pursuant to the April 3, 1997 Report and Recommendation adopted by the [TRA], [BellSouth] hereby notifies the TRA that [BellSouth] intends to file, on or after March 12, 1998, an application with the Federal Communications Commission ("FCC") for authority to provide interLATA telecommunications services in Tennessee.").

<sup>16</sup> To the extent that BellSouth, upon recognition that there existed a possibility that deficiencies existed, was desirous of a road map approach so that guidance could be provided and essential areas of evaluation remedied prior to the issuance of final findings, BellSouth could have so advised the Authority so that the appropriate accommodations could have been incorporated into the procedural framework. Such a request would not be inconsistent with our goal of providing the means with which BellSouth would, in our opinion, be deemed in compliance with Section 271. With the exception of permanent prices for interconnection and unbundled network elements in Tennessee, however, BellSouth has consistently contended that it was otherwise 271 compliant. *See,*

that the company fully intends on filing with the FCC following the expiration of the notice period. To the extent that BellSouth, having filed its advance notice on December 12, 1997, and its SGAT on January 16, 1998, at some time thereafter no longer contemplated an FCC filing date within some reasonable time after expiration of the advance notice period, the procedural framework adopted in this cause strongly suggests that an initial filing postponement or immediate subsequent withdrawal of a 271 filing is the course of action that discretion dictates. Consistent with the agreed upon procedural framework, BellSouth has repeatedly contended since January 1998 that it is Section 271 compliant in Tennessee.<sup>17</sup> Thus, any supplements submitted by BellSouth under said procedural framework prior to a hearing were contemplated to be nonmaterial, nondispositive changes.<sup>18</sup> Moreover, an election by BellSouth to submit material and/or dispositive supplements post-hearing but prior to an announced decision on the merits may be indicative of a premature filing. A "new" Section 271 filing, as would be represented by a material and/or dispositive supplement, would oblige the Authority to conduct a second review, with or without an advance notice period.<sup>19</sup>

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*e.g., BellSouth's Proposed Statement of Issues and Comments, January 20, 1998, pp. 5-6 (BellSouth urged the TRA to approve the terms and conditions of the SGAT "subject to the condition and understanding that the final prices approved by the TRA in the Permanent Price proceeding will promptly be incorporated into the SGAT."); BellSouth's Response to Staff Report, February 10, 1997, p. 11 ("BellSouth believes that it has complied with all aspects of the 14-point competitive checklist[.].")*

<sup>17</sup> Given the intended purpose of the advance notice period, a legitimate presumption existed that BellSouth fully appreciated the timing implications of its filing. *See supra n. 15*. At or near the time of the filing of both its advance notice and SGAT in Tennessee, and well before the hearing on the merits, BellSouth possessed a road map of sorts for Section 271 compliance based upon the FCC's evaluation of four (4) Section 271 applications: (Ameritech/Michigan; SBC/Oklahoma; BellSouth/South Carolina; and, BellSouth/Louisiana I). The FCC had evaluated, at that time, two (2) BellSouth applications.

<sup>18</sup> "I certainly didn't envision that, as part of the hearing before the TRA, BellSouth would be making wholesale changes to the nature of the evidence that it was putting on before the TRA. At least in my mind, my envisioning of BellSouth's updating the record would consist of minor changes to their SGAT or, you know, minor changes to their testimony. I certainly didn't envision that the TRA was requesting BellSouth to file new witnesses, substantially new evidence, and evidence that was not considered as part of the hearing before the TRA itself." *December 15, 1998, Authority Conference Transcript, p. 15* (comments of counsel for AT&T).

<sup>19</sup> In fact, the FCC requires that "In the event that the applicant submits (in replies or ex parte filings) factual evidence that changes its application in a material respect, the Commission reserves the right to deem such

Second, BellSouth stated that the purpose of withdrawing its case is “[t]o avoid the necessity of BellSouth having to undergo the burden and expense to prepare another supplemental filing and thereafter, the Authority and Staff having to review same[.]” *BellSouth Notice of Voluntary Dismissal and Withdrawal* at 2. Like BellSouth’s first statement in support of its withdrawal, it is similarly and equally important that this statement be reviewed in the context of the record.

Acceptance of BellSouth’s stated support for its withdrawal, that the filing of supplements has become too burdensome, necessarily and logically leads to the conclusion, given our procedural framework and absent another representation by BellSouth, that BellSouth’s advance notice may have been premature. The filing of advance notice with the Authority contemporaneously with preparedness and intent to file a compliant Section 271 application with the FCC, which, of course, was the foundation upon which the procedural framework was erected and agreed to, would fundamentally eliminate the necessity that repeated, substantial supplements would be introduced before any hearing on the merits.<sup>20</sup> Hence, while facially meritorious, BellSouth’s concerns as stated in its *Notice of Voluntary Dismissal and Withdrawal* may, when viewed in context of the entire record, have their genesis in the fact that BellSouth filed its advance notice with the Authority on December 12, 1997, but has, to date, chosen not to file its Section 271 application with the FCC. Based on representations from BellSouth, the procedural framework was developed with the understanding that BellSouth intended to file its

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submission a new application and start the 90-day review process anew.” *Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act, FCC 96-469, Section B (Dec. 6, 1996)*.

<sup>20</sup> “I think the expectation when this case was established was that BellSouth would file here at the TRA . . . shortly before it was prepared to go to the FCC. Therefore, I think we all had the expectation that we would have a hearing here at the TRA on the evidence that BellSouth thought that it would take to the FCC.” *March 16, 1999, Authority Conference Transcript*, pp. 34-5 (comments of counsel for AT&T).

Section 271 application with the FCC relatively soon after the expiration of the advance notice period.

Finally, the Authority has steadily proceeded forward with its review of BellSouth's Section 271 filing and has remained unaware, during this period, of BellSouth's deep concerns with respect to this aspect of supplemental filings up until the eve that the Authority was scheduled to publicly announce a decision on the record before it in this matter.<sup>21</sup>

c. AT&T's Objections to the Notice of Voluntary Dismissal and Withdrawal

AT&T's opposition to *BellSouth's Notice of Voluntary Dismissal and Withdrawal* is, to say the least, intriguing. For quite some time, AT&T has contended, in some manner, directly or indirectly, that BellSouth's 271 filing in Tennessee is premature and noncompliant and should thus be dismissed. *See, e.g., AT&T's Motion to Dismiss BellSouth's SGAT, Determine that BellSouth has not met the Act's Fourteen Point Competitive Checklist and Dismiss the Proceeding, January 16, 1998; and AT&T's Response to BellSouth's Supplemental Notice of Filing, August 12, 1998.* With this background, it appears that BellSouth's current filing provides AT&T, at least in part, what it has sought all along - dismissal of BellSouth's 271 filing.<sup>22</sup> AT&T cited no legal authority for its position.

d. Effects of BellSouth's Voluntary Dismissal and Withdrawal

As stated earlier, there is recognition that BellSouth's decision to abandon the 271 process in Tennessee occurred coincidentally upon learning that the Authority had set this matter for a decision on the merits. *See Exhibit A attached hereto.* It was not until the Authority denied

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<sup>21</sup> In fact, after the hearing in this matter, BellSouth represented that the evidence in the case "conclusively demonstrates that the local market in Tennessee is open to competition and that BellSouth has complied fully with the requirements of Sections 251, 252(d), and 271(c)(2)(B) of the Telecommunications Act of 1996." *BellSouth's Post-Hearing Brief, p. 1, TRA Docket No. 97-00309, July 13, 1998.*

BellSouth's motion to defer a decision on the merits in this case that BellSouth submitted its *Notice of Voluntary Dismissal and Withdrawal*.

BellSouth's move for delay in this case is perplexing because, as shown in the *Order Denying BellSouth's March 10, 1999, Motion to Defer*, which is attached hereto as **Exhibit A**, it has for two (2) years consistently urged the Authority to move forward in this case. In fact, on more than one occasion, BellSouth has strenuously stated that anything less than full throttle in this case would be to the detriment of Tennessee consumers.<sup>23</sup> Having taken a two-year position that the Authority continually and consistently progress forward in this case, the filing currently before this agency raises questions that only BellSouth itself can answer for certain.

The foregoing notwithstanding, while this action indicates that BellSouth will not seek entry into the long distance market as early as it had previously suggested, according to the procedural framework, BellSouth's action does not, from a legal perspective, diminish the development of a competitive local telephone market in Tennessee. BellSouth remains obligated to comply with the Act, including, but not limited to, sections 251 and 252. BellSouth's duties and obligations under the Act, including interconnection, unbundled nondiscriminatory access, which includes operations support systems, resale, and collocation, continue irrespective of whether BellSouth actively pursues Section 271 approval. If BellSouth, in the opinion of a competing provider, falters in complying with the Act, there remains, apart from the 271 process, avenues to raise such issues and to challenge such action or inaction.<sup>24</sup>

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<sup>22</sup> See, e.g., *AT&T's Post-Hearing Brief*, p. 2, *TRA Docket No. 97-00309*, July 13, 1998 ("BellSouth's SGAT does not offer the nondiscriminatory access and interconnection required by the Act, and BellSouth has not demonstrated compliance with section 271 of the Act. Accordingly, the TRA should reject BellSouth's SGAT[.]").

<sup>23</sup> BellSouth opined in January of 1998 that "it is not in the interest of Tennessee consumers for this critical proceeding to be delayed[.]" *BellSouth's Proposed Statement of Issues and Comments*, January 20, 1998, p. 6.

<sup>24</sup> See, cf. *Ohlander v. Larson*, 114 F.3d 1531, 1537 (10<sup>th</sup> Cir. 1997), cert. denied, 118 S. Ct. 702 (1998) (Absent clear and substantial legal prejudice the district court normally should grant a voluntary dismissal.). Since

#### IV. MODIFICATIONS TO PROCEDURAL FRAMEWORK

Since March 4, 1997, the date on which the Authority commenced this case, the Authority has, at the request of BellSouth, expended considerable resources with respect to BellSouth's 271 Application. During this period, the Authority has learned much about the 271 process and the issues related thereto. Our experience has led the Hearing Officer to conclude that certain modifications to the procedural framework adopted by the Authority on April 29, 1997, would enhance the 271 process in Tennessee. Recognizing that BellSouth, as stated in its *Notice of Voluntary Dismissal and Withdrawal*, will refile with the Authority in the future, and given the concerns of BellSouth as set forth in said filing, this is an appropriate time to establish those modifications.<sup>25</sup>

First, BellSouth should not refile with the Authority until such time as BellSouth is persuaded that it is in compliance with Section 271 of the Act. Anything less may result in a situation indistinguishable from the current one. Further, this requirement is consistent with the concerns raised by BellSouth in its *Notice of Voluntary Dismissal and Withdrawal*. Second, when BellSouth chooses to refile its ninety (90) days' advance notice with the Authority, it should file simultaneously therewith the filing that it will rely on before the FCC. This requirement is consistent with the FCC's policy in this regard.<sup>26</sup>

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BellSouth, as stated above, remains bound to its obligations under the Act, AT&T has not sufficiently identified any clear and substantial legal prejudice that would result from BellSouth's voluntary dismissal.

<sup>25</sup> "At the appropriate time, BellSouth will renew its filing with then current information[.]" *BellSouth's Notice of Voluntary Dismissal and Withdrawal*, p. 2.

<sup>26</sup> "We expect that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon. . . . [W]e find it necessary once again to emphasize the requirement that a BOC's section 271 application must be complete on the day it is filed." *Ameritech Order*, para. 49 and 50. See also *Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act*, FCC 96-469, Section B (Dec. 6, 1996) ("We expect that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon."). The Authority reserves the right to revisit the procedural framework, if, at its discretion, it becomes appropriate to do so.



## V. CONCLUSIONS

Continuing to work with the parties on this process would substantially aid in furthering the goals of both the state Telecommunications Act and the federal Telecommunications Act. Let us assume solely for the purposes of this filing that the Authority concluded that BellSouth is not currently fully compliant with Section 271 of the Act. Such a determination would likely result in an opportunity for the Authority to work with the parties and to provide BellSouth with guidance on how to correct previously identified deficiencies. This consolidated effort would, by design, be expended to remove obstacles that prohibit full Section 271 compliance. BellSouth's action here does, however, remove, at least for the time being, the Authority's ability to work cooperatively with BellSouth in the 271 process. Nonetheless, the Authority is very much aware of the considerable resources that are committed in filing and reviewing Section 271 applications. We, therefore, stand ready and willing, as we have since the outset, to furnish a "road map," if needed, that provides the means via which BellSouth can realize a favorable recommendation in Tennessee supporting its entry into the long distance market. *See Ameritech Order at para. 403 and Separate Statement of then Chairman Reed Hundt.*

Still, as noted earlier, under the Act, the decision of whether or when to apply for Section 271 approval with the FCC is in the sole discretion of BellSouth. Thus, the Hearing Officer has concluded that the Authority should, consistent with the modifications to the procedural framework set forth herein, accept *BellSouth's Notice of Voluntary Dismissal Without Prejudice and Withdrawal of Advance Notice of Section 271 Filing*.<sup>27</sup>

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<sup>27</sup> See *In the Matter of Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, FCC, CC Docket No. 97-1 (February 12, 1997) ("We hereby grant Ameritech's request to dismiss its [Section 271] application without prejudice."); cf. *Eager v. Kain*, 158 F. Supp. 222, 223 (E.D. Tenn. 1957) ("Under the Federal Rules of Civil Procedure a dismissal

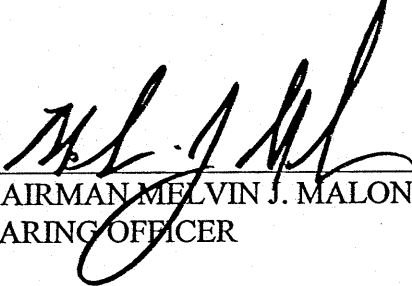
**IT IS THEREFORE ORDERED THAT:**

1. BellSouth Telecommunication, Inc.'s Notice of Voluntary Dismissal Without Prejudice and Withdrawal of Advance Notice of Section 271 Filing is accepted.
2. The procedural schedule previously adopted by the Tennessee Regulatory Authority in this matter is modified as set forth herein, and may be amended by the Authority, from time to time, as may be necessary.
3. Any party aggrieved by this initial decision may file a Petition for Reconsideration with the Tennessee Regulatory Authority within ten (10) days from and after the date of this Order. Such petition shall be considered by the Hearing Officer presiding herein.
4. Any party aggrieved by this initial decision may also file a Petition for Appeal pursuant to Tenn. Code Ann. § 4-5-315 with the Tennessee Regulatory Authority within ten (10) days from and after the date of this Order. Additionally, if any Director of the Authority or any of the

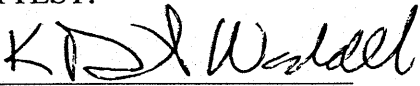
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after trial requires either a signed stipulation by all parties or an order of the court upon such conditions as the court deems proper.”).

parties herein do not seek review of this Initial Order within the time prescribed in Tenn. Code Ann. § 4-5-315, this Order shall become the Final Order.

  
\_\_\_\_\_  
CHAIRMAN MELVIN J. MALONE, AS  
HEARING OFFICER

ATTEST:

  
\_\_\_\_\_  
Executive Secretary

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 14, 1999

IN RE: BELLSOUTH TELECOMMUNICATIONS, )	
INC.'S ENTRY INTO LONG DISTANCE )	Docket No.
(INTERLATA) SERVICE IN TENNESSEE )	97 - 00309
PURSUANT TO SECTION 271 OF THE )	
TELECOMMUNICATIONS ACT OF 1996 )	

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ORDER DENYING BELLSOUTH TELECOMMUNICATIONS, INC.'S  
MARCH 10, 1999, MOTION TO DEFER

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On March 10, 1999, the Tennessee Regulatory Authority ("TRA" or "Authority") issued a Final Conference Agenda for its regularly scheduled March 16, 1999, Authority Conference. This matter, TRA Docket No. 97-00309, was listed as Agenda Item No. 1 and was scheduled to be deliberated by the Directors of the Authority on March 16, 1999. The presence of this matter on the Authority's Final Conference Agenda provided notice that the Directors of the Authority were prepared to and planned to deliberate this case on the merits at its March 16, 1999, public Conference.

On March 10, 1999, BellSouth Telecommunications, Inc. ("BellSouth") filed a *Motion to Remove Item No. 1 From March 16, 1999, Final Conference Agenda*. The intervenors filed responses to BellSouth's motion. This matter is before the Authority on *BellSouth's Motion to Remove Item No. 1 From March 16, 1999, Final Conference Agenda*, referred to hereinafter as the Motion to Defer. After careful consideration, the Motion to Defer is denied for the reasons set forth below.

## **I. TRAVEL OF THE CASE**

Prior to the passage of the federal Telecommunications Act of 1996 (the "Act") in February of 1996, Bell Operating Companies ("BOCs"), such as BellSouth, were prohibited from entry into the in-region long distance (interLATA) market. Under this prohibition, BellSouth could not provide long distance services in Tennessee. Section 271 of the Act, however, provides that BOCs may gain entry into the in-region long distance market by meeting the criteria set forth therein and obtaining the approval of the Federal Communications Commission ("FCC"). Before making any determinations under Section 271 of the Act, the FCC must consult with the State commission of the State that is the subject of the application. 47 U.S.C. § 271(d)(2)(B).

Cognizant of their consultative role under Section 271 of the Act, and in an effort to hasten the development of competition in the telecommunications market in Tennessee, on March 4, 1997, at a regularly scheduled Conference, the Directors of the Authority instituted a Formal Inquiry (the "Inquiry") for the purpose of determining the compliance of BellSouth with the criteria and procedures set forth in the Act for entry into the in-region long distance (interLATA) markets in Tennessee.<sup>1</sup>

Under the Act, the decision of when to apply for Section 271 approval with the FCC is in the sole discretion of the BOCs. BellSouth voluntarily agreed to provide the TRA at

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<sup>1</sup> The Order Instituting Formal Inquiry and Adopting Procedure was entered on March 21, 1997. It should be noted here that on December 17, 1996, the Directors of the TRA requested the TRA Staff to conduct an informal investigation into BellSouth's entry into the long distance market in Tennessee. Comments received from the Consumer Advocate Division, BellSouth, and certificated facilities-based providers of local telephone service in Tennessee were included in the TRA Staff's Informal Investigation and Report, which was submitted to the Directors on February 18, 1997.

least ninety (90) days' advance notice before filing its Section 271 application with the FCC. On December 12, 1997, BellSouth filed its Notice of Filing, together with supporting documentation and testimony, with the TRA. BellSouth filed its Statement of Generally Available Terms and Conditions ("SGAT") on January 16, 1998. A hearing on the merits was held on May 5-7, May 11-15, and May 27-28, 1998.

## II. POSITIONS OF THE PARTIES ON THE MOTION TO DEFER

BellSouth set forth four (4) reasons in support of its Motion to Defer. First, BellSouth argued that consideration of this matter on the merits is premature until the conclusion of the Petition to Convene a Contested Case Proceeding to Establish Permanent Prices for Interconnection and Unbundled Network Elements, TRA Docket No. 97-01262. Second, BellSouth contended that its supplemental filing of July 22, 1998, and the issues surrounding this filing, namely the opportunity for both AT&T Communications of the South Central States, Inc. ("AT&T") and NEXTLINK Tennessee, L.L.C. ("NextLink") to respond thereto, render this matter not ripe for a decision on the merits. Next, BellSouth maintained that the Authority should not render its decision in this matter until the intervenors have the opportunity to consider, submit, and/or respond to the deposition of Mr. William Denk regarding BellSouth's Tennessee PCS study. Finally, BellSouth asserted that the Authority should defer its ruling until such time as the parties have reduced to writing the removal of settled issues from this contested case, as resolved at the November 19, 1998, Status Conference.

On the other hand, the intervenors steadfastly maintained that this case is ripe for disposition by the Authority. It is the intervenors' position that none of the reasons submitted by BellSouth is a valid justification to delay this proceeding.

### III. DISCUSSION

BellSouth's first reason for requesting a deferral in this matter rests on the fact that the Petition to Convene a Contested Case Proceeding to Establish Permanent Prices for Interconnection and Unbundled Network Elements, TRA Docket No. 97-01262 (the "Permanent Prices Case"), is pending final resolution. Based on the entire record in this 271 proceeding, the Directors find this reason without merit and totally contradictory to prior positions of BellSouth in this very proceeding.<sup>2</sup>

Since this 271 case was commenced, BellSouth has consistently and aggressively argued that the Authority could, and in fact should, proceed with this 271 case notwithstanding the posture of the Permanent Prices Case. In motions filed in January of 1998, AT&T and NextLink contended that BellSouth's 271 filing should be either dismissed or delayed until the conclusion of the Permanent Prices Case. In opposition to these motions, BellSouth argued that "there is no reason why the TRA should delay consideration of BellSouth's SGAT or its entry into long distance until the Permanent Price proceeding has been completed." *BellSouth's Proposed Statement of Issues and Comments, January 20,*

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<sup>2</sup> The Authority issued its Interim Order on Phase I of Proceeding to Establish Prices for Interconnection and Unbundled Network Elements, TRA Docket No. 97-01262 (the "Phase I Order") on January 25, 1999. On that same date, the United States Supreme Court issued an opinion that may have a substantive effect on the Phase I Order. The parties have filed motions to reconsider and/or clarify and said motions are currently pending for resolution.

1998, at 5-6.<sup>3</sup> BellSouth urged the TRA to approve the terms and conditions of the SGAT “subject to the condition and understanding that the final prices approved by the TRA in the Permanent Price proceeding will promptly be incorporated into the SGAT.” Id. See also Transcript of Proceedings, Docket No. 97-00309, January 22, 1998, Status Conference at 24<sup>4</sup>

BellSouth argued this position as late as the 271 hearing on the merits. See Transcript of Proceedings, Docket No. 97-00309, May 6, 1998, Hearing, Vol. IIB at 106 (“As soon as [the permanent prices] are established by the TRA, it says in that SGAT that those prices will be replaced by the permanent prices that’s established by the TRA.”) (Testimony of BellSouth witness Al Varner). BellSouth’s most recent allegation concerning an effort by competing local exchange companies to delay its 271 application was made in a November 17, 1998, filing. See BellSouth’s Response to Objections to BellSouth’s Supplemental Notice of Filing at 3.

BellSouth opined in January of 1998 that “it is not in the interest of Tennessee consumers for this critical proceeding to be delayed” because of revisions in the Permanent Prices Case’s schedule.<sup>5</sup> *BellSouth Proposed Statement of Issues and Comments, January*

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<sup>3</sup> BellSouth maintained that “BellSouth firmly believes that the recently revised schedule in the Permanent Price Docket should not result in a delay in the previously-established schedule in the 271 proceeding. . . . [I]t is not in the interest of Tennessee consumers for this critical proceeding to be delayed.” *BellSouth’s Proposed Statement of Issues and Comments, January 20, 1998, at 6.*

<sup>4</sup> The Authority denied both AT&T’s motion to dismiss and NextLink’s motion to defer.

<sup>5</sup> It should be noted that the revisions in the schedule in the Permanent Prices Case were due to BellSouth filing a motion for leave to file surrebuttal testimony, including revised exhibits and a revised cost study, after the hearing on the merits was well underway. See Order Approving Report and Recommendations of the Hearing Officer filed January 9, 1998, and Granting BellSouth’s Motion for Leave to File Surrebuttal Testimony.



20, 1998, at 6. BellSouth has, since January of 1998, considered 271 a critical proceeding for Tennessee consumers, and has failed to adequately identify any occurrence that would render it less so today. Given BellSouth's adhesion to its position, for well over a year, that the 271 proceeding should not be delayed, the Authority now finds BellSouth's late conversion here unpersuasive. At this stage of the proceeding, there exists no material reason to justify delaying the deliberations in Docket No. 97-00309 until the conclusion of Docket No. 97-01262.

BellSouth's second argument concerns the supplemental filings. On July 22, 1998, and subsequent to the hearing, BellSouth filed supplemental evidence in support of its 271 application. In August of 1998, both AT&T and NextLink objected to BellSouth's supplemental filing. BellSouth filed a response to the objections on November 17, 1998. At a December 15, 1998, Authority Conference, the parties reached a verbal agreement regarding BellSouth's supplemental filing and were directed to submit the agreement in writing as soon as possible in order to avoid any further delay in this matter. Under the agreement BellSouth's supplemental filing would become a part of the evidentiary record subject to an opportunity for the intervenors to rebut the same. The parties have had at least three (3) months to submit the agreement to the Authority. To date, no such agreement has been submitted. Whether to further delay this matter until such time as the parties submit an agreement or a resolution is made by the Authority is in the sole discretion of the Authority.<sup>6</sup> Since the Authority may consider the supplemental filing and any responses thereto after

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<sup>6</sup> The Authority has attempted to schedule a time to resolve the stalemate surrounding this agreement, but the parties have been unsuccessful in agreeing to a mutually satisfactory time.

deliberating on the evidentiary record as it existed at the conclusion of the hearing, no prejudice to any party would result from the Authority proceeding to deliberations.

Next, BellSouth cites the Denk deposition to justify a deferral. Like the two (2) before it, this reason is also unconvincing. First, BellSouth has not affirmatively asserted that it is relying on the Tennessee PCS study in support of its 271 filing. See November 19, 1998, Status Conference Transcript at 6-7 ("*So it may be that we will not rely upon PCS. . . . So right now we're not sure that we're going to be relying upon that study in support of our application.*"). Second, the deposition was requested by the intervenors, not BellSouth. Thus, arguably, any prejudice caused by deliberating this matter at this stage with respect to Mr. Denk's deposition would be to the detriment of the intervenors, not BellSouth. Moreover, as with the supplemental filings, the Authority could consider the PCS study and Mr. Denk's deposition subsequent to deliberations on the evidentiary record as it existed at the conclusion of the hearing.

Finally, perhaps the least meritorious of BellSouth's contentions for delay involves outstanding negotiations concerning the terms of a stipulation. Various issues were "settled" by the parties and removed from contention at a November 19, 1998, Status Conference.<sup>7</sup> The parties were directed to memorialize the agreements in writing and submit them to the Authority. To date, no such agreements have been submitted. This is of little consequence to the remaining contested issues in this case. If the parties fail to reduce to writing the terms of

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<sup>7</sup> At the November 19, 1998, Status Conference, the parties present agreed to resolve checklist items 3, 7(1) and 9, consistent with their comments.

the settlement, then the Authority may deliberate those previously settled issues at a later time.

#### IV. CONCLUSIONS

As noted earlier, BellSouth filed its 271 Notice of Filing with the Authority in December of 1997, and its SGAT in January of 1998. As accurately articulated by AT&T, BellSouth has argued vehemently for two (2) years, time after time, that this case should not be delayed and urged, in spite of the substantial volume of the record <sup>8</sup>, a speedy resolution. See AT&T Comments on BellSouth's Motion to Remove Item No. 1 From March 16, 1999, Final Conference Agenda at 5-6. After many conferences, several technical workshops, a discovery period, and the submittal of pre-filed testimony, an extensive hearing on the merits was held. Subsequent to the hearing, the parties submitted post-hearing briefs and proposed findings of fact and conclusions of law. The record is ripe.

While the Authority recognizes that BellSouth's positions and offerings with respect to the checklist may change over time, the Authority is also mindful that in order to either timely approve BellSouth's 271 application, affording due process to all parties, or to timely provide guidance to BellSouth (a "roadmap") with respect to identified deficiencies, it is both necessary and essential to act upon the current evidentiary record. To do otherwise, may place both the parties and the Authority in an extremely awkward evidentiary posture at a later time.

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<sup>8</sup> The record in this case now exceeds approximately 40,000 pages.

Let us assume solely for the purposes of BellSouth's Motion to Defer that the Directors of the Authority are not of the opinion that BellSouth is in compliance with Section 271 of the Act, based on the record as it currently stands. Then, in order to provide BellSouth with an opportunity to modify and/or supplement its 271 submission with an aim towards 271 compliance, by correcting deficiencies identified by the Authority, the Authority should act now on the evidentiary record before it.

Depending upon the action taken by the Authority on the merits of this case, three (3) of the outstanding matters/issues referenced by BellSouth in its Motion to Defer, the supplemental filings, the Denk deposition, and the "settlement" agreement, could be resolved in short order.

The presence of this matter on the Authority's Final Conference Agenda for March 16, 1999, provided notice that the Directors of the Authority were prepared to and planned to deliberate this case on the merits at its March 16, 1999, Authority Conference. BellSouth has not come forward with any information that the Authority was not privy to and fully aware of when the Authority issued its March 16, 1999, Final Conference Agenda. Further, in its motion, BellSouth did not cite any prejudicial harm that it might incur if the Authority proceeded to deliberations.

Having carefully considered the arguments of the parties with respect to BellSouth's Motion to Defer, the Directors of the Authority voted 2 to 1 to deny the motion.<sup>9</sup> Further, the

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<sup>9</sup> Director Kyle did not join in the position of the majority. Director Kyle stated that "I would be in favor of the Authority deferring any consideration on the merits but not for the reasons" put forth by BellSouth. *March 16, 1999, TRA Conference Transcript at 18-19, 20.*

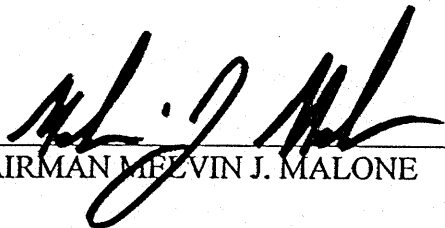
Directors unanimously appointed Chairman Melvin Malone to preside as Hearing Officer for a decision on the merits or any other action considered appropriate by the Hearing Officer.

**IT IS THEREFORE ORDERED THAT:**

1. BellSouth's *Motion to Remove Item No. 1 From March 16, 1999, Final Conference Agenda* is denied.


2. Chairman Melvin J. Malone is hereby appointed as Hearing Officer for the purpose of rendering a decision on the merits or taking any other action considered appropriate by the Hearing Officer.

3. Any Party aggrieved by the decision of the Tennessee Regulatory Authority in this matter may file a Petition for Reconsideration with the Authority within ten (10) days of the date of this Order.

  
CHAIRMAN MELVIN J. MALONE

\* \* \*

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DIRECTOR SARA KYLE

  
DIRECTOR H. LYNN GREER, JR.

ATTEST:

  
Executive Secretary

\* Director Kyle did not join in the position of the majority. See Footnote 9 above.

## BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee 37203 JAN 27 PM 4 12

January 27, 1998

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*

Docket No. 97-00309

**REPORT AND RECOMMENDATION OF HEARING OFFICER**  
**ON JANUARY 22, 1998, STATUS CONFERENCE**

**I. HISTORY OF CASE**

Prior to the passage of the federal Telecommunications Act of 1996 (the "Act") in February of 1996, Bell Operating Companies ("BOCs"), such as BellSouth Telecommunications, Inc. ("BellSouth"), were prohibited from entry into the in-region long distance (interLATA) market. Under this prohibition, BellSouth could not provide long distance services in Tennessee. Section 271 of the Act, however, provides that BOCs may gain entry into the in-region long distance market by meeting the criteria set forth therein and obtaining the approval of the Federal Communications Commission ("FCC"). Before making any determinations under Section 271 of the Act, the FCC must consult with the State commission of the State that is the subject of the application. 47 U.S.C. § 271(d)(2)(B).

Cognizant of their consultative role under Section 271 of the Act, and in an effort to hasten the development of competition in the telecommunications market in Tennessee, on March 4, 1997, at a regularly scheduled Conference, the Directors of the Tennessee Regulatory Authority ("TRA") instituted a Formal Inquiry (the "Inquiry") for the purpose of determining the compliance of BellSouth with the criteria and procedures set forth in the Act

for entry into the in-region long distance (interLATA) markets in Tennessee.<sup>1</sup> At that same Conference, the Directors appointed Director Melvin Malone as the Hearing Officer for the purpose of presiding over any pre-hearing or status conferences, resolving discovery issues, and such other matters as may aid in the disposition of the action. Any hearing on the merits will be before the Directors of the TRA.

The first Status Conference in this matter was held on April 3, 1997, for the purposes of defining the specific factual, legal, and policy issues to be considered in this Inquiry, determining the extent and means of obtaining additional information in aid of this Inquiry, and establishing the procedural framework for this Inquiry. The Report and Recommendation of Hearing Officer on April 3, 1997, Status Conference (hereinafter referred to as the "First Report and Recommendation") was issued by the Hearing Officer on April 18, 1997. The Directors of the TRA unanimously adopted and approved the First Report and Recommendation on April 29, 1997.<sup>2</sup>

Under the Act, the decision of when to apply for Section 271 approval with the FCC is in the sole discretion of the BOCs. Among others things, the First Report and Recommendation reflected that BellSouth voluntarily agreed to provide the TRA at least ninety (90) days' advance notice before filing its Section 271 application with the FCC. *First Report and Recommendation at 6.* On December 12, 1997, BellSouth filed its Notice of Filing, together with supporting documentation and testimony, with the TRA. According to

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<sup>1</sup> The Order Instituting Formal Inquiry and Adopting Procedure was entered on March 21, 1997. It should be noted here that on December 17, 1996, the Directors of the TRA requested the TRA Staff to conduct an informal investigation into BellSouth's entry into the long distance market in Tennessee. Comments received from the Consumer Advocates Division, BellSouth, and certificated facilities-based providers of local telephone service in Tennessee were included in the TRA Staff's Informal Investigation and Report, which was submitted to the Directors on February 18, 1997.

<sup>2</sup> Copies of the Order Adopting Report of Hearing Officer and the First Report and Recommendation are attached hereto as Collective Exhibit A.

Sprint Communications - **Carolyn Tatum Roddy**, Esquire, 3100 Cumberland Circle, N0802, Atlanta, GA 30339;

BellSouth Long Distance, Inc. - **Guilford Thornton**, Esquire, Stokes & Bartholomew, 424 Church Street, Nashville, TN 37219;

TCG MidSouth, Inc. - **D. Billye Sanders**, Esquire, Waller, Lansden, Dortch, & Davis, 511 Union St., #2100, Nashville, TN 37219-1750;

Intermedia Communications - **Enrico C. Soriano**, Esquire, Kelley, Drye & Warren, 1200 19th Street, N.W., Suite 500, Washington, D.C. 20036;<sup>3</sup>

Communication Workers of America, AFL-CIO - **Donald L. Scholes**, Esquire, Branstetter, Kilgore, Stranch & Jennings, 227 Second Ave. North, Nashville, TN 37219.

**b. Petitions to Intervene**

The following petitions to intervene were pending before the Hearing Officer at the second Status Conference: (1) Petition to Intervene of TCG MidSouth, Inc.; (2) Petition to Intervene of Communication Workers of America, AFL-CIO; and (3) Petition to Intervene of the Telecommunications Resellers Association. Without objection, the Hearing Officer granted the petitions to intervene.

**c. Motions**

The following motions were pending before the Hearing Officer at the second Status Conference: (1) AT&T's Motion to Dismiss; (2) NextLink's Motion to Delay Further Proceedings Until After Completion of the "Permanent Pricing" Docket; and (3) AT&T's Motion for Leave to Conduct Written Discovery.

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<sup>3</sup> Without objection, Mr. Soriano participated telephonically.



(i) AT&T's Motion to Dismiss

AT&T argued its Motion to Dismiss and all parties were given the opportunity to comment thereupon. AT&T contended that BellSouth's Statement of Generally Available Terms ("SGAT") should be denied or dismissed because the SGAT does not contain cost-based prices/rates, because a "virtually identical" SGAT filed by BellSouth in its Section 271 South Carolina application before the FCC was rejected by the FCC, and because BellSouth, in AT&T's opinion, is foreclosed from pursuing entry into the long distance market in Tennessee under Track B of Section 271(c)(1). Further, AT&T contended that the TRA should conclude that BellSouth has not met the requirements of the Competitive Checklist set forth in Section 271(c)(2)(B) because the FCC made such a finding in its review of BellSouth's Section 271 South Carolina application and because there are no cost-based prices/rates for BellSouth in Tennessee. AT&T maintained that the TRA should make a determination that this proceeding should be dismissed on the basis that BellSouth cannot proceed under either Track A or Track B of Section 271(c)(1). Finally, AT&T requested that the TRA dismiss this Section 271 proceeding in its entirety because a substantially similar filing was denied by the FCC in its review of BellSouth's Section 271 South Carolina application and due to the lack of cost-based prices/rates.

For its cause, and in opposition to AT&T's Motion to Dismiss, BellSouth contended that Track A is open to BellSouth because of the presence and activities of MCI Metro, Sprint PCS, and PowerTel in Tennessee. BellSouth argued that it would be inappropriate at this stage for the TRA to make a threshold or summary judgment type of determination with regard to Track A availability without a hearing. *BellSouth Telecommunications, Inc.'s*

*Proposed Statement of Issues and Comments at 5-6.* Also, BellSouth maintained that "there is no reason why the TRA should delay consideration of BellSouth's SGAT or its entry into long distance until the Permanent Price proceeding has been completed." *Id. at 7.* BellSouth urged the TRA to approve the terms and conditions of the SGAT "subject to the condition and understanding that the final prices approved by the TRA in the Permanent Price proceeding will promptly be incorporated into the SGAT." *Id. See also Transcript of Proceedings, Docket No. 97-00309, January 22, 1998, Status Conference at 24 (hereinafter "Transcript").* BellSouth does not deny that the Act requires cost-based prices/rates before approval of an SGAT. *Transcript at 8.* Still, BellSouth does not think it necessary for this proceeding to come to a halt due solely to the lack of cost-based prices/rates.

First, with respect to AT&T's contentions that the TRA should dismiss this Section 271 proceeding in its entirety because a substantially similar filing was denied by the FCC in its review of BellSouth's South Carolina Section 271 application, that the TRA should not approve or should dismiss BellSouth's Tennessee SGAT because a "virtually identical" SGAT was recently rejected by the FCC, and that the TRA should conclude that BellSouth has not met the requirements of the Competitive Checklist because the FCC made such a finding in its review of BellSouth's Section 271 South Carolina application, the Hearing Officer, at this point in time, finds them untenable.

While not much time passed between the FCC's ruling on BellSouth's Section 271 South Carolina application on December 24, 1997, and the filing of BellSouth's final SGAT in Tennessee on January 16, 1998, a considerable amount of time passed between BellSouth's filing of its Section 271 South Carolina application with the FCC and the filing of

its final SGAT in Tennessee. Further, AT&T's arguments here are based upon the assertion that BellSouth's Tennessee SGAT is the same as its South Carolina SGAT. But, AT&T admitted at the second Status Conference that it understands that BellSouth has modified the Tennessee SGAT and that AT&T has "not yet had the opportunity to sit down and review that to acknowledge whether or not that is the case." *Transcript at 31*. This admission coupled with BellSouth's assertions that the Tennessee SGAT is materially different from the rejected South Carolina SGAT suggests that AT&T's arguments here are premature.<sup>4</sup>

Next, with respect to AT&T's argument that the TRA should make the threshold determinations of whether BellSouth can proceed under either Track A or Track B in Tennessee, AT&T and BellSouth commenced this discussion at totally opposite ends of the spectrum. While AT&T opined that said threshold determinations could be made without a hearing, BellSouth argued that it would be inappropriate to proceed to decisions with respect to Track A and Track B without a hearing. At this stage, it is the opinion of the Hearing Officer that the record is not sufficiently developed for the TRA to make a determination as to whether BellSouth can proceed under Track A. At the conclusion of this limited discussion, AT&T did not object to a hearing, at least with respect to a Track A determination, and BellSouth maintained that there should be a "comprehensive hearing" on all the issues, including Track A, Track B, the SGAT, and the Competitive Checklist.

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<sup>4</sup> At the second Status Conference, counsel for BellSouth stated that the Tennessee SGAT is very different from the SGAT that the FCC rejected in its review of BellSouth's Section 271 South Carolina application. *Transcript at 35-39*. Also, in *BellSouth Telecommunications, Inc.'s Notice of Filing, January 16, 1998*, with the TRA, BellSouth stated that "Although BST anticipated that the Final Statement would be identical to the draft Statement that was filed on December 12, 1997, the Statement has been revised to address certain issues raised by the FCC in its recent decision in *In re: Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, CC Docket 97-208 (FCC, Dec. 24, 1997) (hereinafter '*FCC BellSouth-South Carolina Order*'). The Statement also has been revised to incorporate performance measurement requirements recently imposed upon BST by the Georgia Public Service Commission[.]"

or before March 17, 1998, which is sixty (60) days after the filing of the SGAT, the schedule adopted in the TRA's Permanent Prices Case establishes that cost-based prices/rates will not be set on or before March 17, 1998.<sup>7</sup> Therefore, absent an extension of the period required for approval, the TRA, as a matter of law, would have no choice on March 17, 1998, but to disapprove and/or dismiss BellSouth's SGAT or permit the SGAT to take effect without action.

Subsequent to a recess in the second Status Conference, counsel for BellSouth indicated that BellSouth may desire to agree to extend the sixty (60) day period for review under Section 252(f)(3)(A). *Transcript at 60*. Counsel for BellSouth, however, stated that BellSouth would be reluctant to extend said date indefinitely. *Id.*

It is the opinion of the Hearing Officer that AT&T's Motion to Dismiss the SGAT for lack of cost-based prices/rates should be denied at this time because the period for review under Section 252(f) has not expired and BellSouth apparently seeks, or may seek, an agreement to extend the sixty (60) day period for review pursuant to Section 252(f)(3)(A).

It is undisputed that Section 252(f)(3)(A) provides for an extension of the period for the review of the SGAT. Although it could be argued that said extension is intended to apply only in situations under which the state commission is for some reason(s) unable to complete its review of a "complete when filed" SGAT within sixty (60) days, this, in the opinion of the Hearing Officer, is not the only reasonable interpretation of the language. As the Hearing Officer has concluded in this case, the extension may apply in other instances as well, including, but not limited to, where the submitting carrier requests, or agrees to, an extension

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<sup>7</sup> BellSouth acknowledged at the second Status Conference that cost-based prices/rates will not be established in Tennessee on or before March 17, 1998. *Transcript at 9*.

for reasons not contrary to the plain language of Section 252(f), not prejudicial to other interested parties, and not inconsistent with the public interest.

In light of the comments expressed by BellSouth near the close of the second Status Conference, the Hearing Officer has concluded that because the sixty (60) day period for review of the SGAT under Section 252(f) has not expired, because BellSouth has expressed a strong likelihood that it will seek an extension under Section 252(f)(3)(A), and since there has been no showing that such an extension would be contrary to the plain language of Section 252(f), prejudicial to other interested parties, or inconsistent with the public interest, the Motion to Dismiss the SGAT should be denied at this time.<sup>8</sup>

With an aim towards judicial economy and efficiency, the Hearing Officer hereby requests that BellSouth express in writing to the TRA on or before noon, January 30, 1998, whether it seeks to extend the period for review of its SGAT.<sup>9</sup> If BellSouth, as intimated by its counsel, seeks to extend the period of review until such time as the TRA issues a final written order in TRA Docket Number 97-01262, *In Re: Petition to Convene a Contested Case Proceeding to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, it is the opinion of the Hearing Officer that such extension should be accepted. If BellSouth declines to seek such an extension and does not agree to the same, then it is the opinion of the Hearing Officer that the TRA will be left with no option but to

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<sup>8</sup> In fact, accepting an extension, if one is requested, would result in the TRA and the parties in this case having more time to review BellSouth's SGAT than they would have if the SGAT is dismissed.

<sup>9</sup> If BellSouth chooses to file such a document, it should be served on all parties of record via facsimile or hand delivery.

dismiss BellSouth's SGAT as a matter of law, as the TRA is statutorily barred from approving an SGAT that does not contain cost-based prices/rates.<sup>10</sup>

Therefore, after carefully considering AT&T's Motion to Dismiss in full, BellSouth's Proposed Statement of Issues and Comments, the comments of the parties made during the second Status Conference, and the entire record in this proceeding, and after reviewing and studying this matter further subsequent to the second Status Conference, the Hearing Officer recommends that AT&T's Motion to Dismiss should be denied.

(ii) NextLink's Motion to Delay

NextLink argued its Motion to Delay and all parties were given the opportunity to comment thereupon. In its Motion to Delay, NextLink contended that this Section 271 proceeding should be delayed until cost-based prices/rates, as required under the Act, are established in Tennessee. NextLink argued that until the TRA establishes cost-based prices/rates in Tennessee BellSouth is unable to meet the requirements of certain portions of the Competitive Checklist. It was NextLink's opinion that continuing this proceeding without cost-based prices/rates would be futile. In sum, BellSouth responded by arguing that the TRA should proceed with its review and approval of BellSouth's SGAT with the condition and understanding that the final cost-based prices/rates approved by the TRA in the Permanent Prices Case would be promptly incorporated into the SGAT, and that there is no reason to delay this proceeding.

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<sup>10</sup> It follows from the opinions and recommendations set forth herein that AT&T's Motion to Dismiss this Section 271 proceeding in its entirety for lack of cost-based prices/rates should be denied. Even if the TRA dismisses BellSouth's SGAT, unlike some parties, the Hearing Officer, at this time, is not persuaded that a dismissal of the SGAT is tantamount to a dismissal of this entire Section 271 proceeding.

For the same reasons set forth with respect to the conclusions reached by the Hearing Officer on AT&T's Motion to Dismiss, the Hearing Officer recommends that the TRA deny NextLink's Motion to Delay at this time. Additionally, the Hearing Officer recommends that NextLink's Motion to Delay be denied for the reasons set forth below.

While NextLink's motion has merit and was well-argued by its counsel, the Hearing Officer has concluded that granting the motion may constitute an encroachment upon matters that the Act leaves to the discretion of the BOCs, here BellSouth. For instance, NextLink requests the following in its motion:

[T]he TRA should suspend the filing of testimony and the proposed hearing until the agency has completed the Permanent Pricing docket. After that time, BellSouth should be required to refile its Section 271 application which will presumably incorporate the TRA's findings in the Permanent Pricing docket. BellSouth's revised filing should be submitted at least sixty to ninety days before BellSouth files the application with the FCC to give the TRA adequate time to evaluate the application and make a determination as to BellSouth's compliance with Section 271(c) at the time of BellSouth's actual filing with the FCC.

*NextLink's Motion to Delay Further Proceedings Until After Completion of the "Permanent Pricing" Docket at 3.* Since the Act establishes that BellSouth is the master of its fate with respect to the time it chooses to file its Section 271 application, the Hearing Officer is reluctant, without agreement from BellSouth, to recommend that the TRA proceed in the manner suggested by NextLink. Thus, the Hearing Officer recommends that the Motion to Delay be denied for this additional reason as well.

(iii) AT&T's Motion for Leave to Conduct Written Discovery

As noted above, also pending before the Hearing Officer at the second Status Conference was AT&T's Motion for Leave to Conduct Written Discovery. Recognizing that

a substantial amount of activity related to Section 271 has occurred since the first Status Conference, and seeing no prejudice to any party, the Hearing Officer recommends that written discovery be allowed in this matter and that any and all responses to discovery requests be filed with the TRA and served on all parties of record. At the second Status Conference, BellSouth objected to the scope and nature of some of the discovery requests propounded by AT&T. BellSouth's objections were well-taken, and AT&T agreed to review its discovery requests in an attempt to streamline the same.

Notwithstanding the above, given the uncertainty surrounding this proceeding at this time, the Hearing Officer advised the parties that discovery should not proceed until after the Directors have acted upon this Report and Recommendation.

d. Status of Proceeding

Should the Directors of the TRA adopt this Report and Recommendation, the direction that this proceeding takes in the immediate future is, in large part, within the discretion of BellSouth. In its Statement of Issues, even BellSouth concedes that "it may be appropriate to discuss certain refinements to the § 271 schedule referenced in the April 18 Report and Recommendation of the Hearing Officer[.]" *BellSouth Telecommunications, Inc.'s Proposed Statement of Issues and Comments* at 6. In light of the pending motions and with recognition that the procedural schedule set forth in the First Report and Recommendation required that testimony be filed on January 27, 1998, the Hearing Officer suspended the procedural schedule in this matter. If the Directors adopt and approve this Report and Recommendation, the Hearing Officer recommends that the Directors declare the procedural schedule set forth in the First Report and Recommendation void. But, for all



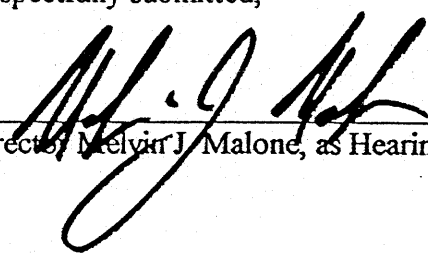
other purposes, the Hearing Officer recommends that the First Report and Recommendation remain in effect.

Assuming that BellSouth will, consistent with the comments made by its counsel at the second Status Conference, seek to extend the period for review under Section 252(f), the Hearing Officer has attached, as **Exhibit B** to this Report and Recommendation, a proposed procedural schedule.

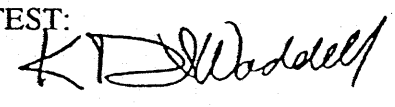
**IV. SUMMARY OF RECOMMENDATIONS OF HEARING OFFICER**

1. Deny AT&T's Motion to Dismiss;
2. Deny NextLink's Motion to Delay;
3. Grant AT&T's Motion for Leave to Conduct Written Discovery in part; and
4. Void the procedural schedule set forth in the First Report and Recommendation.

Respectfully submitted,

  
\_\_\_\_\_  
Director Melvin J. Malone, as Hearing Officer

ATTEST:

  
\_\_\_\_\_  
Executive Secretary

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January **22**, 1998, copies of the foregoing document were served upon the parties by United States Mail with sufficient postage thereon to carry the same to their destinations, properly addressed as follows:

**Guy Hicks**, Esquire, BellSouth Telecommunications, Inc., 333 Commerce Street, Suite 2101, Nashville, TN 37201;

**Bennett Ross**, Esquire, BellSouth Telecommunications, Inc., 675 West Peachtree Street, Suite 4300, Atlanta, GA 30375;

**Dana Shaffer**, Esquire, NextLink, 105 Malloy Street, #300, Nashville, TN 37201;

**Alaine Miller**, Esquire, NextLink, 155 - 108th Ave., NE, Suite 810, Bellevue, WA 98004;

**H. LaDon Baltimore**, Esquire, Farrar & Bates, 211 Seventh Avenue North, Suite 320, Nashville, TN 37219-1823;

**Claire Daly**, LDDS WorldCom, 201 Energy Parkway, Suite 200 Lafayette, LA 70508;

**Douglas W. Kinkoph**, LCI International, 8180 Greensboro Dr., Suite 800, McLean, VA 22101; and

**Charles B. Welch**, Esquire, Farris, Mathews, Gilman, Branan & Hellen, PLC, 511 Union Street, Suite 2400, Nashville, TN 37219;

**Henry Walker**, Esquire, Boulton, Cummings, Connors & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

**Susan Berlin**, Esquire, and **Martha McMillin**, Esquire, MCI Telecommunications Corporation, 780 Johnson Ferry Road, Suite 700, Atlanta, GA 30342;

**Jon E. Hastings**, Esquire, Boulton, Cummings, Connors & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

**Val Sanford**, Esquire, Gullett, Sanford & Robinson, 230 Fourth Avenue North, 3d Floor, Nashville, TN 37219-8888;

**James Lamoureux**, Esquire, AT&T Communications of the South Central States, Inc., 1200 Peachtree St., NE Atlanta, GA 30309;

**Vincent Williams, Esquire, and Vance Broemel, Esquire, Consumer Advocate Division, Office of the Attorney General, Esquire, 426 5th Avenue, N., 2nd Floor, Nashville, TN 37243;**

**Susan Davis Morley, Esquire, Wiggins & Villacorta, P.A., 501 East Tennessee St., P.O. Drawer 1657, Tallahassee, FL 32302;**

**Carolyn Tatum Roddy, Esquire, Sprint Communications, 3100 Cumberland Circle, N0802, Atlanta, GA 30339;**

**Guilford Thornton, Esquire, BellSouth Long Distance, Inc., Stokes & Bartholomew, 424 Church Street, Nashville, TN 37219;**

**D. Billye Sanders, Esquire, TCG MidSouth, Inc., Waller, Lansden, Dortch, & Davis, 511 Union St., #2100, Nashville, TN 37219-1750;**

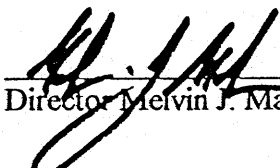
**Michael McRae, Sr. Regulatory Counsel - TCG MidSouth, Inc., 2 Lafayette Centre, 1133 21st Str., Suite 400, Washington, D.C. 20036;**

**Enrico C. Soriano, Esquire, and Jonathan E. Canis, Esquire, Intermedia Communications, Kelley, Drye & Warren, 1200 19th Street, N.W., Suite 500, Washington, D.C. 20036;**

**Donald L. Scholes, Esquire, Communication Workers of America, AFL-CIO, Branstetter, Kilgore, Stranch & Jennings, 227 Second Ave. North, Nashville, TN 37219;**

**Andrew O. Isar, Tennessee Resellers Association, 4312 92nd Ave. NW, Gig Harbor, WA 98335; and**

**Dennis McNamee, Esquire, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN 37243-0505.**

  
\_\_\_\_\_  
Director Melvin J. Malone

## BEFORE THE TENNESSEE REGULATORY AUTHORITY

June 25, 1997

NASHVILLE, TENNESSEE

In Re:

BellSouth Telecommunications, Inc.'s Entry	)	
Into Long Distance (InterLATA) Service	)	Docket No.
In Tennessee Pursuant to Section 271 of the	)	97-00309
Telecommunications Act of 1996	)	

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**ORDER ADOPTING REPORT OF HEARING OFFICER**

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On April 18, 1997, a Report and Recommendation ("Report") arising from a Pre-Hearing Conference held in the above-captioned matter presided over by Director Melvin J. Malone was submitted to the Directors of the Tennessee Regulatory Authority ("Authority") for approval. The approval of the Report was considered by the Directors at a regularly scheduled Authority Conference held on April 29, 1997.

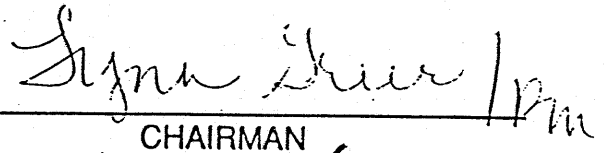
After reviewing the Report of the Hearing Officer, the Directors of the Authority voted unanimously to adopt the Report as submitted.

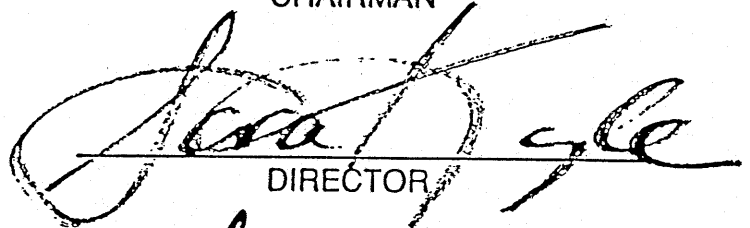
**IT IS THEREFORE ORDERED:**

- 1) That the Report and Recommendation of the Hearing Officer is hereby adopted and approved as filed;
- 2) That the schedule and resolution of certain procedural matters set forth in the Report and Recommendation of the Hearing Officer shall be incorporated in this Order as though copied verbatim herein;

3) That any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order; and

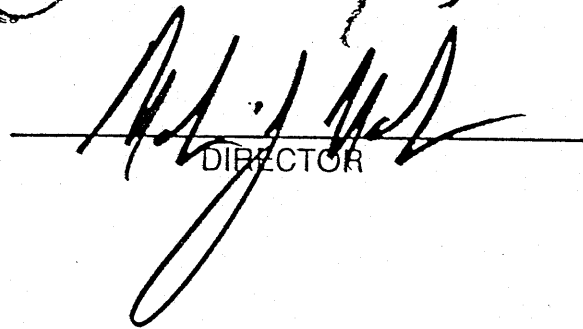
4) That any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

  
CHAIRMAN

  
DIRECTOR

ATTEST:

  
EXECUTIVE SECRETARY

  
DIRECTOR

## **EXHIBIT B**

### **PROPOSED PROCEDURAL SCHEDULE FOR 271 PROCEEDING**

January 30, 1998	BellSouth agrees to extend under 252(f) until written order issued in Permanent Prices Docket
February 3, 1998	Consideration of Second Report and Recommendation
February 6, 1998	Comments on how TRA should conduct Technical Workshops and Demonstrations
February 10, 1998	Discovery Requests Due
February 24, 1998	Discovery Responses Due
March 5-6, 1998	Technical Workshop - - OSS
March 6 , 1998	Second Set of Discovery Requests Due (only parties issuing a first set of discovery requests may file a second set; second set may consist of no more than 10 questions which must be related to first set of requests)
March 13, 1998	Second Set of Responses Due
March 23-24, 1998	Technical Workshop Performance Measures
March 27, 1998	Pre-filed Direct and Rebuttal Testimony filed by all parties other than BellSouth
April 9, 1998	BellSouth files Rebuttal Testimony
April 24, 1998	Legal Briefs on PCSs as Track A providers (no reply briefs)
May 6-8 <u>and</u> May 11-15, 1998	Hearings
June 1, 1998	Post Hearing Briefs

All filings must be made on or before noon on the day specified.

## BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

April 18, 1997

RECEIVED

MELVIN MALONE

APR 18 1997

*BellSouth Telecommunications, Inc.'s Entry Into Long Distance  
(InterLATA) Service in Tennessee Pursuant to Section 271 of the  
Telecommunications Act of 1996*

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SECRETARY

TN REGULATORY AUTHORITY ~~Docket~~ No. 97-00309

**REPORT AND RECOMMENDATION OF HEARING OFFICER**  
**ON APRIL 3, 1997, STATUS CONFERENCE**

On March 4, 1997, at a regularly scheduled Conference, the Directors of the Tennessee Regulatory Authority ("TRA") instituted a Formal Inquiry (the "Inquiry") for the purpose of determining the compliance of BellSouth Telecommunications, Inc. ("BellSouth") with criteria and procedures set forth in Section 271 of the Federal Telecommunications Act of 1996 (the "Act") for entry into the long distance (interLATA) markets in Tennessee.<sup>1</sup> At that same Conference, the Directors appointed Director Melvin Malone to preside as the Hearing Officer in a Status Conference, which was held on April 3, 1997. The purpose of the Status Conference was to define the specific factual, legal, and policy issues to be considered in this Inquiry, to determine the extent and means of obtaining additional information in aid of this Inquiry, and to establish the procedural framework for this Inquiry. The following appearances were entered:

BellSouth Telecommunications, Inc. - **Guy Hicks**, Esquire, 333 Commerce Street, Suite 2101, Nashville, TN 37201, and **Bennett Ross**, Esquire, 675 West Peachtree Street, Suite 4300, Atlanta, GA 30375;

NextLink - **Dana Shaffer**, Esquire, 105 Malloy Street, #300, Nashville, TN 37201, and **Alaine Miller**, Esquire, 155 - 108th Ave., NE, Suite 810, Bellevue, WA 98004;

<sup>1</sup> The Order Instituting Formal Inquiry and Adopting Procedure was entered on March 21, 1997.

LDDS WorldCom and LCI International - **H. LaDon Baltimore**, Esquire, Farrar & Bates, 211 Seventh Avenue North, Suite 320, Nashville; TN 37219-1823;

Time Warner Communications of the Mid South, L.P. - **Charles B. Welch**, Esquire, Farris, Mathews, Gilman, Branan & Hellen, PLC, 511 Union Street, Suite 2400, Nashville, TN 37219;

American Communications Systems, Inc. - **Henry Walker**, Esquire, Boulton, Cummings, Conners & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

MCI Telecommunications Corporation - **Martha P. McMillin**, Esquire, 780 Johnson Ferry Road, Suite 700, Atlanta, GA 30342, and **Jon E. Hastings**, Esquire, Boulton, Cummings, Conners & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

AT&T Communications of the South Central States, Inc. - **Val Sanford**, Esquire, Gullett, Sanford & Robinson, 230 Fourth Avenue North, 3d Floor, Nashville, TN 37219-8888, and **James Lamoureux**, Esquire, 1200 Peachtree St., NE Atlanta, GA 30309;

Consumer Advocate Division, Office of the Attorney General - **Vincent Williams**, Esquire, 426 5th Avenue, N., 2nd Floor, Nashville, TN 37243.

**I. Parties to the Proceeding**

In its March 21, 1997, Order Instituting Formal Inquiry and Adopting Procedure (the "Order"), the TRA resolved that the companies that filed comments in response to the Informal Section 271 Investigation and Report<sup>2</sup> conducted by the TRA Staff were deemed parties to this proceeding. Although LCI International Telecom Corporation ("LCI") filed a Petition for Leave to Intervene in this proceeding, the Hearing Officer advised counsel for LCI that the Petition was unnecessary because LCI filed comments in response to the

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<sup>2</sup> On December 17, 1996, the Directors of the TRA requested the TRA Staff to conduct an informal investigation into BellSouth's entry into the long distance market in Tennessee. Comments received from the Consumer Advocates Division, BellSouth, and certificated facilities-based providers of local telephone service in Tennessee were included in the TRA Staff's Informal Investigation and Report, which was submitted to the Directors on February 18, 1997.



Informal Section 271 Investigation and Report and is thereby deemed a party to this proceeding. Therefore, it is the recommendation of the Hearing Officer that no action be taken on LCI's Petition for Leave to Intervene.<sup>3</sup>

At the Status Conference, counsel for BellSouth proposed that BellSouth Long Distance, Inc. ("BSLD") be added as a party to this proceeding. AT&T commented that BSLD should be represented during the proceedings to the extent BellSouth and BSLD are separate corporations. Counsel for MCI objected to BellSouth and BSLD filing separate testimony so as to prevent their having "two bites of the apple." Counsel for ACSI commented that BellSouth and BSLD are "one company" and as such should only have "a single spokesperson" in this proceeding.

The Hearing Officer was informed at the Status Conference that counsel for BSLD was present at the commencement of the Status Conference but had departed before this issue arose. Although counsel for BSLD was present at the Status Conference, he chose, for whatever reason, not to seek to intervene as a party. The Directors of the TRA have already established the method for intervening in this proceeding. If BSLD desires to attempt to become a party to this case, it may seek intervention like any other interested party.

## II. Contents of the Record

There were no objections to including the TRA Staff's Informal Section 271 Investigation and Report in the record in this docket. It was also proposed that the

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<sup>3</sup> At this time, the parties to this proceeding are as follows: American Communications Systems, Inc. ("ACSI"), AT&T Communications of the South Central States, Inc. ("AT&T"), BellSouth Telecommunications, Inc. ("BellSouth"), the Consumer Advocate Division ("CAD"), Intermedia Communications ("Intermedia"), LDDS WorldCom ("LDDS"), LCI International Telecom Corporation ("LCI"), MCI Telecommunications Corporation ("MCI"), NextLink, Sprint Communications Company L. P. ("Sprint"), and Time Warner Communications of the Mid South, L.P. ("Time Warner").

testimony, evidence, orders and other documents filed in *In re: Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252*, Docket No. 96-01152; *In re: Petition of MCI Telecommunications Corporation for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. 96-01271; *In re: Petition by Sprint Communications Company, L.P. for Arbitration of Interconnection with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996*, Docket No. 96-01411 be made a part of the record in this docket. None of the parties objected to this proposal. The CAD, however, stated that since it was not a party to the aforementioned arbitration proceedings that it would need time to consider this proposal. The CAD requested time to reflect upon the proposal and perhaps to have the opportunity to review the records of the arbitration proceedings. The Hearing Officer reserved deciding the issue of whether the aforementioned dockets should be included in the record in this proceeding until after the CAD had an opportunity to file a written recommendation. The Hearing Officer requested that the CAD file such recommendation on or before April 10, 1997. To date, the CAD has not filed any such recommendation or an extension of time in which to do the same. It is the recommendation of the Hearing Officer that the TRA Staff's Informal Section 271 Investigation and Report, including the responses of ACSI and Intermedia, and the final orders from the aforementioned arbitration proceedings be made a part of the record in this docket. Counsel for AT&T is directed to consult with the parties to this proceeding to determine if a Confidentiality Agreement is necessary. If it is determined

that a Confidentiality Agreement is necessary, counsel for AT&T shall prepare the same for execution by the parties.

### III. Discovery

The Hearing Officer recommends that the TRA Staff be permitted to serve discovery requests upon BellSouth and any other party to this proceeding any time after March 21, 1997, the date of the order initiating this proceeding. None of the parties objected to this recommendation. The parties will remain under a continuing, good faith obligation to supplement their responses to the Staff's discovery requests. The CAD requested at the Status Conference that it be permitted to serve discovery requests upon BellSouth. None of the parties objected to the request of the CAD. It is the recommendation of the Hearing Officer that the CAD be permitted to submit discovery requests upon BellSouth after the date upon which BellSouth files its 90-day notice with the TRA. All discovery requests and all responses thereto shall be timely served upon all parties to this proceeding.

### IV. Threshold Legal Issues<sup>4</sup>

Section 271(c) of the Act establishes two (2) routes for Bell Operating Companies ("BOCs") to enter the in-region interLATA market -- the so-called "Track A" option under Section 271(c)(1)(A) and the "Track B" option under Section 271(c)(1)(B). While BellSouth has the prerogative to proceed under Track A, it conceded in response to the TRA Staff's Informal Section 271 Investigation and Report and again at the Status Conference that, in its opinion, it could not proceed under Track A. Some of the parties asserted that Track B is not available to BellSouth in Tennessee and other parties asserted that Track A is

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<sup>4</sup> The parties were given the opportunity at the Status Conference to raise any legal issues that they wished to brief in addition to the Track A, Track B, and permanent cost based rates issues. No other issues were raised by the parties.

not available to BellSouth in Tennessee. It was also argued that BellSouth cannot be granted in-region interLATA authority in Tennessee until the TRA establishes "permanent" cost based rates.

The Hearing Officer directed the parties to submit legal briefs on the aforementioned issues.<sup>5</sup> Briefs must be filed with the TRA no later than noon on April 25, 1997. The parties may file reply briefs that do not exceed five (5) pages in length, double spaced.<sup>6</sup> Reply briefs must be filed with the TRA no later than noon on May 2, 1997. Any reply briefs filed after noon on May 2, 1997, will be returned. The parties are directed to provide the TRA with copies of any authority cited in the briefs, particularly the relevant legislative history, to the extent such authorities are not readily available to the agency. It is the recommendation of the Hearing Officer that the Directors of the TRA hear oral arguments on the briefs at a time later determined.

**V. Advance Notice of BellSouth's Section 271 Filing**

In a letter to the TRA dated April 1, 1997, counsel for BellSouth agreed that BellSouth would provide the TRA at least ninety (90) days' advance notice before an application is filed with the Federal Communications Commission ("FCC") under Section 271 of the Act for authority to provide interLATA services in Tennessee. At the Status Conference, counsel for BellSouth confirmed BellSouth's agreement to provide the TRA with this advance notice. It is the recommendation of the Hearing Officer that contemporaneously with this advance notice, BellSouth shall furnish the TRA, and all parties of record in this proceeding, all evidence and information, of whatever nature, that it will rely

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<sup>5</sup> The Hearing Officer requested the parties to cite sufficient support when making conclusory or authoritative statements.

<sup>6</sup> Briefs should be written in no less than a 12 point font size.

upon before the FCC in support of the Section 271 application.<sup>7</sup> BellSouth agreed to act in good faith in providing the aforementioned documentation to the TRA and in updating any material changes, revisions or additions to said documentation.<sup>8</sup>

#### **VI. Filing of FCC Application with the TRA**

The Hearing Officer recommends that no later than thirty-five (35) days after BellSouth provides the TRA the requisite advance notice of the intent to file with the FCC, BellSouth shall file with the TRA a copy of the Section 271 application to be filed with the FCC.<sup>9</sup> In addition, the Hearing Officer recommends that this supporting documentation shall be filed with the TRA in the same format as it will be filed with the FCC. After filing said document(s), BellSouth shall remain under a good faith continuing obligation to update its Section 271 application with respect to any changes, revisions, or additions.

#### **VII. Schedule of the Proceedings**

Subsequent to BellSouth filing its 90-day notice with the TRA, the following schedule is recommended by the Hearing Officer:

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<sup>7</sup> After some prodding from the Hearing Officer, BellSouth agreed to this recommendation.

<sup>8</sup> According to BellSouth, it contemplates filing its 271 application under Track B. Nonetheless, BellSouth acknowledges that a change in circumstances could result in BellSouth filing its 271 application under Track A. BellSouth agreed to provide the TRA and the parties immediate notice if it changes Tracks at anytime after the initial 90-day notice. It is the recommendation of the Hearing Officer that should BellSouth notify the TRA in its initial 90-day notice that it is filing under one Track, and later notifies the TRA that it has decided to proceed instead under the opposite Track, ~~the 90-day period will start anew~~ at the time of the second notification. This recommendation is premised, among other things, upon a recognition that such a scenario is tantamount to a new filing.

<sup>9</sup> At the time that BellSouth files its Section 271 application pursuant to Section VI of this Report and Recommendation, it is recognized that the possibility exists that some documentation included in the application may have been filed previously with the 90-day notice. To the extent that such documentation previously filed has changed in any manner, such as form, content, substance, etc., said documentation must be refiled in its entirety, with the changes and modifications redlined. If, however, the changes and modifications constitute new arguments that make the previously filed documentation irrelevant or there is a substantial difference in volume, redlining is not required.

1. Legal briefs, as requested in Section IV herein, shall be filed by the parties on or before noon April 25, 1997. Reply briefs, not exceeding five (5) pages in length, double spaced, may be filed on or before noon May 2, 1997.
2. BellSouth shall provide the TRA with 90 days advance notice before filing its Section 271 application with the FCC.
3. No later than thirty-five (35) days after BellSouth provides the TRA its 90-day notice, BellSouth shall file with the TRA a copy of the Section 271 application to be filed with the FCC.
4. BellSouth has informed the TRA and the parties that it intends on filing a draft of its statement of generally available terms at the time that it files its 90-day notice with the TRA.
5. Thirty-five (35) days after BellSouth files its 90-day notice, BellSouth has agreed to file its final statement of generally available terms with the TRA.<sup>10</sup>
6. Forty-five (45) days after BellSouth files its 90-day notice, all parties other than BellSouth shall file their direct and rebuttal pre-filed testimony.<sup>11</sup>
7. Ten (10) days after the filing of direct and rebuttal pre-filed testimony by parties other than BellSouth, BellSouth shall file rebuttal testimony. It is the recommendation of the Hearing Officer that surrebuttal testimony not be permitted.

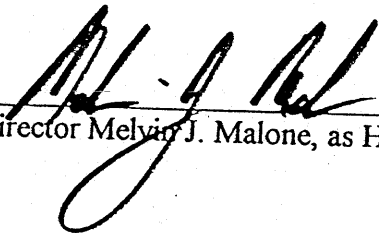
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<sup>10</sup> BellSouth represented at the Status Conference that its final statement of generally available terms will be the same as the draft of its statement of generally available terms. BellSouth shall redline any changes from the draft to the final.

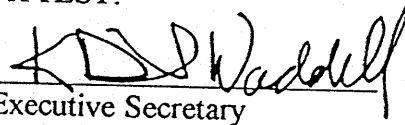
<sup>11</sup> Recognizing that some witnesses may testify on a host of issues within a single, multi-page document, the parties, including BellSouth, are directed, when filing any testimony, in whatever form, to identify the specific pages on which each of the issues a witness addresses are addressed.

8. A Pre-Hearing Conference will be held within five (5) days after the filing of rebuttal testimony by BellSouth (or as soon thereafter as is practicable).
9. All filings made pursuant to this Report and Recommendation shall be made on or before noon on the date due.
10. The TRA reserves the right to modify this schedule at any time.<sup>12</sup>

Respectfully submitted,

  
\_\_\_\_\_  
Director Melvin J. Malone, as Hearing Officer

ATTEST:

  
\_\_\_\_\_  
Executive Secretary

<sup>12</sup> Many of the dates triggered by the filing of the 90-day notice may fall on weekends. The TRA will issue a calendar in this docket after BellSouth files its 90-day notice.

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April ~~1~~<sup>8</sup>, 1997, the foregoing document was served upon the parties by United States Mail with sufficient postage thereon to carry the same to their destinations, properly addressed as follows:

**Guy Hicks**, Esquire, BellSouth Telecommunications, Inc., 333 Commerce Street, Suite 2101, Nashville, TN 37201;

**Bennett Ross**, Esquire, BellSouth Telecommunications, Inc., 675 West Peachtree Street, Suite 4300, Atlanta, GA 30375;

**Dana Shaffer**, Esquire, NextLink, 105 Malloy Street, #300, Nashville, TN 37201;

**Alaine Miller**, Esquire, NextLink, 155 - 108th Ave., NE, Suite 810, Bellevue, WA 98004;

**H. LaDon Baltimore**, Esquire, Farrar & Bates, 211 Seventh Avenue North, Suite 320, Nashville, TN 37219-1823;

**Charles B. Welch**, Esquire, Farris, Mathews, Gilman, Branan & Hellen, PLC, 511 Union Street, Suite 2400, Nashville, TN 37219;

**Henry Walker**, Esquire, Boulton, Cummings, Connors & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

**Martha P. McMillin**, Esquire, MCI Telecommunications Corporation, 780 Johnson Ferry Road, Suite 700, Atlanta, GA 30342;

**Jon E. Hastings**, Esquire, Boulton, Cummings, Connors & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

**Val Sanford**, Esquire, Gullett, Sanford & Robinson, 230 Fourth Avenue North, 3d Floor, Nashville, TN 37219-8888;

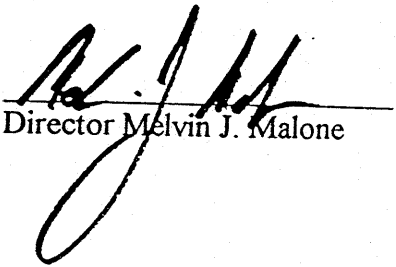
**James Lamoureux**, Esquire, AT&T Communications of the South Central States, Inc., 1200 Peachtree St., NE Atlanta, GA 30309;

**Vincent Williams**, Esquire, Consumer Advocate Division, Office of the Attorney General, Esquire, 426 5th Avenue, N., 2nd Floor, Nashville, TN 37243;

**Susan Davis Morley**, Esquire, Wiggins & Villacorta, P.A., 501 East Tennessee St., P.O. Drawer 1657, Tallahassee, FL 32302.



Ed Phillips, Esquire, Tennessee Regulatory Authority, 460 James Robertson  
Parkway, Nashville, TN 37243-0505.



Director Melvin J. Malone

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance  
(InterLATA) Service in Tennessee Pursuant to Section 271 of the  
Telecommunications Act of 1996*

Docket No. 97-00309

RECEIVED  
EXEC. SECRETARY OFF.

NOV 20 1998

TN REGULATORY AUTHORITY

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REPORT OF HEARING OFFICER  
ON NOVEMBER 19, 1998, STATUS CONFERENCE

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Pursuant to the Notice attached hereto as **Exhibit A**, a Status Conference in this matter was set for November 19, 1998. The purpose of the Status Conference was to ascertain the status of the following: (1) late filed exhibits to the hearing; (2) BellSouth's Tennessee Personal Communications Services ("PCS") Study; and (3) the positions of the parties with respect to the Federal Communications Commission's ("FCC") recent findings in In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121 (October 13, 1998), that BellSouth Telecommunications, Inc. ("BellSouth") has met, among others, checklist items 3, 7, 8, 9, and 10. The Status Conference was held on November 19, 1998, and this Report memorializes said Status Conference.

I. TRAVEL OF THE CASE

Prior to the passage of the federal Telecommunications Act of 1996 (the "Act") in February of 1996, Bell Operating Companies ("BOCs"), such as BellSouth, were prohibited from

entry into the in-region long distance (interLATA) market. Under this prohibition, BellSouth could not provide long distance services in Tennessee. Section 271 of the Act, however, provides that BOCs may gain entry into the in-region long distance market by meeting the criteria set forth therein and obtaining the approval of the FCC. Before making any determinations under Section 271 of the Act, the FCC must consult with the State commission of the State that is the subject of the application. *47 U.S.C. §271(d)(2)(B)*.

Cognizant of their consultative role under Section 271 of the Act, and in an effort to hasten the development of competition in the telecommunications market in Tennessee, on March 4, 1997, at a regularly scheduled Conference, the Directors of the Tennessee Regulatory Authority ("TRA" or "Authority") instituted a Formal Inquiry (the "Inquiry") for the purpose of determining the compliance of BellSouth with the criteria and procedures set forth in the Act for entry into the in-region long distance (interLATA) markets in Tennessee.<sup>1</sup> At that same Conference, the Directors appointed Director Melvin Malone as the Hearing Officer for the purpose of presiding over any pre-hearing or status conferences, resolving discovery issues, and such other matters as may aid in the disposition of the action.

The first Status Conference in this matter was held on April 3, 1997, for the purposes of defining the specific factual, legal, and policy issues to be considered in this Inquiry, determining the extent and means of obtaining additional information in aid of this Inquiry, and establishing the procedural framework for this Inquiry.

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<sup>1</sup> The Order Instituting Formal Inquiry and Adopting Procedure was entered on March 21, 1997. It should be noted here that on December 17, 1996, the Directors of the TRA requested the TRA Staff to conduct an informal investigation into BellSouth's entry into the long distance market in Tennessee. Comments received from the Consumer Advocate Division, BellSouth, and certificated facilities-based providers of local telephone service in Tennessee were included in the TRA Staff's Informal Investigation and Report, which was submitted to the Directors on February 18, 1997.

Under the Act, the decision of when to apply for Section 271 approval with the FCC is in the sole discretion of the BOCs. Among others things, the First Report and Recommendation reflected that BellSouth voluntarily agreed to provide the TRA at least ninety (90) days' advance notice before filing its Section 271 application with the FCC. On December 12, 1997, BellSouth filed its Notice of Filing, together with supporting documentation and testimony, with the TRA.

A second status Conference was held on January 22, 1998, for the purpose of acting on all pending petitions and motions and setting a procedural schedule. A third status conference was held on April 24, 1998, for the purpose of resolving all remaining discovery disputes and other outstanding procedural issues. A hearing on the merits was held on May 5-7, May 11-15, and May 27-28, 1998.

## II. NOVEMBER 19, 1998, STATUS CONFERENCE

### a. Parties Present

The following appearances were entered at the November 19, 1998, Status Conference:

BellSouth Telecommunications, Inc. - **Guy Hicks**, Esquire, 333 Commerce Street, Suite 2101, Nashville, TN 37201; **Keith Milner**, **Bennett Ross**, Esquire, and **William J. Ellenberg II**, Esquire, 675 West Peachtree Street, Suite 4300, Atlanta, GA 30375;

NextLink - **Dana Shaffer**, Esquire, 105 Malloy Street, #300, Nashville, TN 37201;

LDDS WorldCom, LCI International, and Intermedia Communications, Inc. - **H. LaDon Baltimore**, Esquire, Farrar & Bates, 211 Seventh Avenue North, Suite 320, Nashville, TN 37219-1823;

MCI Telecommunications Corporation - **De O'Roark**, Esquire, 780 Johnson Ferry Road, Suite 700, Atlanta, GA 30342;

AT&T Communications of the South Central States, Inc. ("AT&T") - **James Lamoureux**, Esquire, and **Jay Bradbury**, 1200 Peachtree St., NE Atlanta, GA 30309;

Consumer Advocate Division, Office of the Attorney General - **Vance Broemel**, Esquire, 426 5th Avenue, N., 2nd Floor, Nashville, TN 37243.

Sprint Communications - **Carolyn Tatum Roddy**, Esquire, 3100 Cumberland Circle, N0802, Atlanta, GA 30339; and

BellSouth Long Distance, Inc. - **Guilford Thornton**, Esquire, Stokes & Bartholomew, 424 Church Street, Nashville, TN 37219.

**b. Purpose of the Status Conference**

As stated earlier, the purpose of the Status Conference was to ascertain the status of the following: (1) late filed exhibits to the hearing; (2) BellSouth's Tennessee PCS Study; and (3) the positions of the parties with respect to the FCC recent findings in In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121 (October 13, 1998), that BellSouth has met certain checklist items 3 (access to poles, ducts, and conduits, and rights-of-way), 7(I) (911 and E911 services), 8 (white pages directory listings), 9 (numbering administration), and 10 (databases and associated signaling). First, several late filed exhibits were to be submitted by the parties subsequent to the hearing. Next, at the hearing, there was much discussion regarding BellSouth's undertaking and submitting a Tennessee specific PCS Study in support of its Tennessee 271 Application. At the hearing, BellSouth indicated that the study would be completed sometime before August 1, 1998. This study has not been submitted.

Finally, BellSouth has in many respects taken a region-wide approach to complying with Section 271. Subsequent to the Tennessee hearing, the FCC has issued its opinion and order in In

the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121 (October 13, 1998), and the Department of Justice ("DOJ") has issued its comments on BellSouth's Second Section 271 Louisiana Application as well. While the TRA is in the process of conducting its independent review of BellSouth's Tennessee 271 Application pursuant to the Act and BellSouth's December 12, 1997, Notice of Filing, the agency nonetheless remains abreast of the actions of the FCC and the evaluations of DOJ. In order to facilitate the orderly progression of this matter, the TRA has requested the positions of the parties in this proceeding on checklist items 3, 7(I), 8, 9, and 10 in light of the FCC's findings that BellSouth has complied with checklist items 3, 7(I), 8, 9, and 10 in Louisiana.

c. Discussion at Status Conference

(1) Late-filed Exhibits

No party indicated that it had not been properly served with all late-filed exhibits. The Hearing Officer advised the parties to notify the Authority as soon as is practicable if they had not been served with all of the late-filed exhibits.

(2) BellSouth's Tennessee PCS Study

At the Tennessee Section 271 hearing, BellSouth relied in part upon PCS providers to demonstrate compliance with Section 271(c)(1)(A), generally known as Track A.<sup>2</sup> During the

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<sup>2</sup> The FCC has concluded that "the broadband PCS service offered by PCS providers . . . which provides two-way mobile voice service, qualifies as telephone exchange service for purposes of Track A." *Second FCC Order on BellSouth Louisiana 271 Application* at 14. Still, the FCC opined that "[w]e believe that the BOC must show that broadband PCS is being used to replace wireline service, not as a supplement to wireline." *Id.* at 16.

hearing, BellSouth stated its intent to file supporting documentation in the form of a Tennessee specific PCS study subsequent to the hearing. As of November 19, 1998, BellSouth had not filed such study. At the Status Conference, BellSouth indicated that it had completed the study and that it would be filed with the TRA forthwith. The study was filed with the TRA on November 20, 1998.

**(3) Positions of the parties on checklist items 3, 7, 8, 9, and 10**

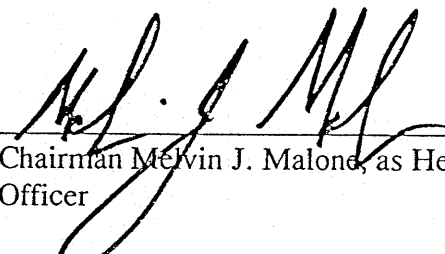
After much discussion concerning the record before the TRA in this matter and the FCC's decisions on BellSouth's Second Louisiana Section 271 Application, the parties present at the Status Conference agreed to resolve checklist items 3, 7(I) and 9, in whole or in part, consistent with and as evidenced by their comments made at the Status Conference, in this matter by submitting a joint agreement to the TRA.

Although all parties of record were notified of the Status Conference, not all chose to attend. Nonetheless, the parties present were instructed to provide all parties of record the opportunity to participate and join in the joint agreement concerning checklist items 3, 7(I), and 9. Any party of record that chooses not to join in the joint agreement must notify the Authority of its position(s) with respect to said checklist items within seven (7) business days of the filing of the joint agreement. Any party failing to join in the joint agreement AND failing to respond as stated above may be found to have waived any objections as to whether BellSouth is in compliance with the checklist items as set forth in the joint agreement.

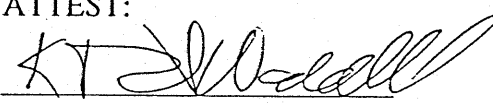
### III. STATUS OF CHECKLIST ITEMS 8 AND 10

The Hearing Officer requested the parties to continue to dialogue concerning checklist items 8 and 10. The parties, with their respective technical representatives and persons with decision making (settlement) authority, are scheduled to meet on December 14, 1998, to discuss, in good faith, the remaining disagreements and contentions concerning these checklist items with an aim toward resolving them, in whole or in part if applicable, by agreement. All parties of record are to be notified of the December 14, 1998, workshop/meeting. The parties must notify the Authority in writing, with service to all parties of record, of the status of checklist items 8 and 10 on or before 4:30 p.m. December 21, 1998.<sup>3</sup>

Respectfully submitted,

  
Chairman Melvin J. Malone, as Hearing  
Officer

ATTEST:

  
Executive Secretary

<sup>3</sup> The parties were asked to submit, on or before noon, December 17, 1998, a joint matrix of the issues, the positions of the parties, and the positions of the FCC and DOJ with respect to the remaining checklist items, being all checklist items except those resolved by agreement of the parties.



## TENNESSEE REGULATORY AUTHORITY

Melvin Malone, Chairman  
Lynn Greer, Director  
Sara Kyle, Director



460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

**REVISED NOTICE OF STATUS CONFERENCE**

**DOCKET:** 97-00309

**COMPANY NAME:** BELLSOUTH TELECOMMUNICATIONS, INC.

**PETITIONER'S ATTORNEY:** Guy Hicks

**IN RE:** BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996

**DATE:** November 13, 1998

Pursuant to this Notice, a Status Conference has been scheduled for Thursday, November 19, 1998, at 9:00AM in the above captioned proceeding. This revised Notice supersedes the November 10, 1998, Notice of the same. This Status Conference is being scheduled by Notice for the purposes of:

- 1) Discussion of Late Filed Exhibits;
- 2) To identify the similarities and differences between BellSouth's Louisiana operations and BellSouth's Tennessee operations; and
- 3) BellSouth's Tennessee PCS study

This Status Conference is being conducted pursuant to T.C.A. §4-5-306 before Hearing Officer Melvin Malone in the Hearing Room at the Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, Tn. In this Status Conference, each party will be given an opportunity to present its position on BellSouth's compliance with the checklist on Attachment A. The primary purpose of the Status Conference is to determine whether parties agree, as found by the FCC in BellSouth's Louisiana 271 application, that certain checklist items have been satisfied. Discussion will be limited to the checklist items on Attachment A. Each party will be given 20 minutes to present its position on the four checklist items. BellSouth will be given 30 minutes for rebuttal. Parties should have company representatives present with decision making authority.

Any motion to change the date of this hearing and/or any other objection must be made in writing, and filed with the office of the Executive Secretary of the Authority. Copies of the motion must be served on all parties.

Participants with disabilities who require special accommodations or alternate communications formats should contact the Tennessee Regulatory Authority ADA-EEO/AA Coordinator/Officer, 460 James Robertson Parkway, Nashville, Tennessee 372134-0505, 1-800-432-8359 or TDD 741-3930 so that reasonable accommodations can be made.

**FOR THE TENNESSEE REGULATORY AUTHORITY:**

K. David Waddell, Executive Secretary

cc: Parties of Record  
Interested Parties

Excerpts from FCC Docket 98-121, Louisiana 271 Decision

CHECKLIST ITEMS FOUND BY FCC TO BE IN COMPLIANCE WITH SECTION 271 OF THE TELECOM ACT:

Checklist Item 3 -- Access to Poles, Ducts, Conduits, and Rights-of-Way

BellSouth satisfies the requirements of checklist item (iii). Telephone company wires must be attached to, or pass through, poles, ducts, conduits, and rights-of-way. In order to fulfill the nondiscrimination obligation under checklist item (iii), BellSouth must show that other carriers can obtain access to its poles, ducts, conduits, and rights-of-way within reasonable time frames and on reasonable terms and conditions, with a minimum of administrative costs, and consistent with fair and efficient practices. Failure by BellSouth to provide such access may prevent other carriers from serving certain customers. BellSouth demonstrates that it has established nondiscriminatory procedures for access to poles, ducts, conduits, and rights-of-way.

Checklist Item 7 -- 911 and E911 Services, Operator Services, and Directory Assistance

BellSouth satisfies the requirements of checklist item (vii)(I), regarding 911 and E911 services. 911 and E911 services transmit calls from end users to emergency personnel. It is critical that BellSouth provide competing carriers with accurate and nondiscriminatory access to 911/E911 services so that these carriers' customers are able to reach emergency assistance. We previously concluded in the BellSouth South Carolina Order that BellSouth met the requirements of this checklist item. BellSouth demonstrates that it continues to meet the statutory requirements as described in the BellSouth South Carolina Order.

Checklist Item 8 -- White Pages Directory Listings

BellSouth satisfies the requirements of checklist item (viii). White pages are the directory listings of telephone numbers of residences and businesses in a particular area. This checklist item ensures that white pages listings for customers of different carriers are comparable, in terms of accuracy and reliability, notwithstanding the identity of the customer's telephone service provider. BellSouth demonstrates that its provision of white page listings to customers of competitive LECs is nondiscriminatory in terms of their appearance and integration, and that it provides white page listings for competing carriers' customers with the same accuracy and reliability that it provides to its own customers.

Checklist Item 9 -- Numbering Administration

BellSouth satisfies the requirements of checklist item (ix). Telephone numbers are

currently assigned to telecommunications carriers based on the first three digits of the local number known as "NXX" codes. To fulfill the nondiscrimination obligation in checklist item (ix), BellSouth must provide other carriers with the same access to new NXX codes within an area code that BellSouth enjoys. This checklist item ensures that other carriers have the same access to new telephone numbers as BellSouth. BellSouth demonstrates that, in acting as the code administrator, it has adhered to industry guidelines and the Commission's requirements under section 251(b)(3).

#### Checklist Item 10 -- Databases and Associated Signaling

BellSouth satisfies the requirements of checklist item (x). Databases and associated signaling refer to the call-related databases and signaling systems that are used for billing and collection or the transmission, routing, or other provision of a telecommunications service. To fulfill the nondiscrimination obligation in checklist item (x), BellSouth must demonstrate that it provides new entrants with the same access to these call-related databases and associated signaling that it provides itself. This checklist item ensures that other carriers have the same ability to transmit, route, complete and bill for telephone calls as BellSouth. BellSouth demonstrates that it provides other carriers nondiscriminatory access to its: (1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems.